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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

TED HARRISON OIL COMPANY

Petitioner,

vs.

No. PCB 99-127

IEPA,

Respondent.

The following is a transcript of the above-entitled matter taken stenographically before Ann Marie Hollo, CSR, RPR, RMR, a notary public within and for the County of Montgomery and State of Illinois. Said hearing was taken on the 6th day of November A.D., 2002, commencing at 9:00 o'clock a.m. at the Illinois Pollution Control Board Room, 600 South Second Street, Room 403, Springfield, Illinois.

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APPEARANCES:

ILLINOIS POLLUTION CONTROL BOARD
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Appearing on behalf of the Petitioner

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Appearing on behalf of the Respondent

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1 HEARING OFFICER LANGHOFF: Good morning,
2 everyone. My name is Steven Langhoff. I'm the
3 Pollution Control Board Hearing Officer who is handling
4 this matter, and I will be holding the hearing today.

5 This is PCB 99-127, Ted Harrison Oil
6 Company versus Illinois Environmental Protection
7 Agency.

8 For the record, it is Wednesday, October 6,
9 2002, and we are beginning at 9:00 a.m. I want to note
10 for the record that there are no members of the public
11 present. Members of the public are encouraged and
12 allowed to provide public comment if they so choose.

13 At issue in this case is the January 25,
14 1999 Illinois Environmental Protection Agency or agency
15 decision denying certain reimbursement costs concerning
16 the Ted Harrison Oil Company, or the petitioner's
17 underground storage tanks located in Cass County,
18 Illinois. The Board accepted this matter for hearing on
19 May 6, 1999.

20 I want to take a brief moment and let you
21 know what is going to happen today and after the hearing
22 today. You should know that it is the Illinois
23 Pollution Control Board, and not me, that will make a
24 final decision in this case. My job as a hearing

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1 officer requires that I conduct this hearing in a
2 neutral and orderly manner so that the Board has a clear
3 record of the proceedings here today.

4 It is also my responsibility to assess the
5 credibility of any witnesses giving testimony today, and
6 I will do so on the record at the conclusion of the
7 proceedings.

8 We will begin with any opening statements
9 from the parties. And then we will proceed with the
10 petitioner's case, followed by the agency having an
11 opportunity to put on a case in its behalf. We will
12 conclude with any closing arguments that may wish to be
13 made on the record today. And then we will discuss off
14 the record a briefing schedule which will then be set on
15 the record at the conclusion of the proceedings.

16 The Board's procedural rules and the Act
17 provide that members of the public shall be allowed to
18 speak or submit written statements at hearing. Any such
19 person offering such testimony today shall be subject to
20 cross examination by both of the parties. Any such
21 statements offered by members of the public shall be
22 relevant to the case at hand. I will call for any
23 statements from members of the public at the conclusion
24 of these proceedings.

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1 This hearing was noticed pursuant to the
2 Act and the Board's rules and regulations and will be
3 conducted pursuant to Sections 101.600 through 101.632
4 and Part 105 of the Board's procedural rules.

5 At this time, I'll ask the parties to make
6 their appearances on the record beginning with the
7 petitioner.

8 MR. HEDINGER: My name is Steve Hedinger,
9 H-e-d-i-n-g-e-r. I'm an attorney for the petitioner,
10 Ted Harrison Oil Company. And with me at the table,
11 counsel table, is Mr. Ted Harrison present of the
12 company. Also accompanying us today are
13 Mrs. Harrison, who is here as an observer and member of
14 the public. And Jeff --

15 MR. WEINHOFF: Weinhoff, W-e-i-n-h-o-f-f,
16 from CWM3 company consultant for Ted Harrison Oil
17 Company.

18 HEARING OFFICER LANGHOFF: Thank you,
19 Mr. Hedinger.

20 And for the agency?

21 MR. MERRIMAN: My name is Dan Merriman,
22 M-e-r-r-i-m-a-n.

23 Seated here to my left is Mr. Doug Oakley,
24 O-a-k-l-e-y, who is the manager of the LUST claims unit

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1 for the bureau of land. And also with me today are
2 Cathy Elston, E-l-s-t-o-n, from the LUST claims unit,
3 and Valerie Davis, D-a-v-i-s, from the LUST -- technical
4 LUST section.

5 HEARING OFFICER LANGHOFF: Thank you,
6 Mr. Merriman.

7 Are there any preliminary matters
8 outstanding or pre-hearing motions that need to be
9 discussed on the record?

10 MR. HEDINGER: The only pre-hearing -- I
11 guess two pre-hearing motions I would have would be to
12 exclude witnesses, and that I'd be allowed to conduct
13 examination of the agency employees as cross-examination
14 as hostile witnesses under the Board's rules.

15 HEARING OFFICER LANGHOFF: Mr. Merriman?

16 MR. MERRIMAN: Well, I see no reason to
17 exclude the witnesses, but I think that's certainly
18 Mr. Hedinger's right to request that. And I think it is
19 also his right to treat the agency witnesses as adverse
20 witnesses, not hostile, but adverse.

21 HEARING OFFICER LANGHOFF: So no objection,
22 Mr. Merriman?

23 MR. MERRIMAN: No objection.

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1 grant both those motions then, Mr. Hedinger.

2 And I'd ask the witnesses for the agency to
3 have a seat in the vestibule of our office right down
4 the hall here.

5 MR. HEDINGER: And for the record, we have
6 named Mr. Weinhoff on our witness list. So he
7 understands that he'll have to leave as well.

8 Mr. Harrison, even though he's on our
9 witness list, is a client. So he will stay with me.

10 MR. MERRIMAN: Mr. Oakley will be the
11 agency representative, and I would ask that he stay with
12 me.

13 HEARING OFFICER LANGHOFF: Thank you.

14 And, Mrs. Harrison -- is there a problem
15 with Mrs. Harrison?

16 MR. HEDINGER: She's not on the witness
17 list.

18 HEARING OFFICER LANGHOFF: Mr. Merriman?

19 MR. MERRIMAN: I have no problem with her
20 staying.

21 HEARING OFFICER LANGHOFF: Then we'll have
22 Mrs. Harrison then stay here in the hearing room, since

23 she will not be a witness, okay?

24 MR. HEDINGER: Yes.

7

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1 HEARING OFFICER LANGHOFF: All right.

2 Would the petitioner, Mr. Hedinger, like to
3 give a brief opening statement on behalf of his client?

4 MR. HEDINGER: We'll reserve our statements
5 for the briefs.

6 HEARING OFFICER LANGHOFF: Thank you.

7 And for the agency?

8 MR. MERRIMAN: The same.

9 HEARING OFFICER LANGHOFF: Thank you.

10 Mr. Hedinger, call your first witness
11 please.

12 MR. HEDINGER: We would call Mr. Doug
13 Oakley please.

14 HEARING OFFICER LANGHOFF: Mr. Oakley,
15 would you come right up here and have a seat by the
16 court reporter. If she has a question, I'm sure she'll
17 just stop you and ask you what something might mean.
18 All your acronyms, she might be asking you what those
19 mean.

20 THE DEPONENT: Okay, fine.

21 HEARING OFFICER LANGHOFF: And would you

22 swear the witness please.

23 [Witness sworn.]

24 HEARING OFFICER LANGHOFF: Thank you.

8

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1 DOUGLAS OAKLEY

2 of lawful age, being produced, sworn and examined on
3 the part of the Petitioner, testifies and says:

4 EXAMINATION

5 QUESTIONS BY MR. HEDINGER:

6 Q. Mr. Oakley, the notice to appear and
7 produce was served on you, or at least on the agency
8 concerning you, and ask that you bring documents with
9 you today. Did you bring any?

10 A. Yes, I did. As a matter of fact, I left
11 them on my -- I better get them.

12 Q. And as a preliminary matter, may I take a
13 look at what you brought with you? And go ahead and
14 have a seat.

15 I notice the top document here has written
16 on it attorney/client confidential communication,
17 attorney work product. Is this for my eyes,
18 Mr. Merriman?

19 MR. MERRIMAN: Apparently -- let me take a
20 look at that.

21 HEARING OFFICER LANGHOFF: Thank you,
22 Mr. Hedinger.

23 The hearing officer is handing the notice
24 to appear and produce here to Mr. Hedinger.

9

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1 MR. HEDINGER: I'm showing it to
2 Mr. Merriman.

3 MR. MERRIMAN: Okay. It's all in the
4 record.

5 MR. HEDINGER: Yes.

6 MR. MERRIMAN: Yeah.

7 MR. HEDINGER: The top page. So, Dan,
8 you're saying that there's nothing in the notice to
9 appear and produce beyond what's already been submitted
10 in the record?

11 MR. MERRIMAN: That's my understanding.

12 MR. HEDINGER: That is not confidential?

13 MR. MERRIMAN: That is my understanding,
14 yes.

15 MR. HEDINGER: Okay.

16 Q. Mr. Oakley, just for my
17 benefit, generally speaking -- and don't tell me the
18 contents of anything that may be privileged, but what
19 documents did you have in that pile that you handed me?

20 A. Essentially some brief type information
21 that Dan had written in regards to a summary judgment
22 motion. I had some notes. I think that's pretty much
23 it. It was just basically stuff that Dan had written in
24 regards to this hearing.

10

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1 Q. Okay, okay. All right. Very good.

2 Mr. Oakley --

3 HEARING OFFICER LANGHOFF: I'm sorry,
4 Mr. Hedinger. This brings up a small question on my
5 part.

6 Mr. Merriman, I know the record has already
7 been tendered, and I see what I perceive to be the
8 record on your table. Do you have any desire to tender
9 that as exhibits today? Is there anything additional
10 that you plan on offering today?

11 MR. MERRIMAN: That's not already in the
12 record? No.

13 HEARING OFFICER LANGHOFF: That's right.

14 MR. MERRIMAN: No.

15 HEARING OFFICER LANGHOFF: And you're not
16 going to be handing me a copy of the record for these
17 proceedings, are you?

18 MR. MERRIMAN: Well, first, I was hoping

19 that this was -- I think when the record was filed, you
20 were not the assigned hearing officer. I was hoping
21 that the Board's copy would be available, if it was
22 necessary, today. This is the only copy that I have of
23 the record here. So if I tendered it, then I wouldn't
24 have a copy.

11

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1 HEARING OFFICER LANGHOFF: And that's
2 fine. I'm sure there is one in Chicago. I checked the
3 file here today. There is not one. I don't have one,
4 nor do I want one. I was just asking. Sometimes it
5 seems that's what you do --

6 MR. MERRIMAN: Well, sometimes we stipulate
7 to the admission of the record as a joint exhibit, but I
8 think the record -- and, Steve, correct me if your
9 thinking is any different -- that the record is already
10 with the agency before the Board.

11 MR. HEDINGER: It would be my understanding
12 it doesn't need to be tendered because it is already
13 before the Board, but if you would like a motion --

14 HEARING OFFICER LANGHOFF: No. I just
15 wondered if that's what might happen.

16 MR. HEDINGER: I will tell you I have
17 copied some pages from the record.

18 HEARING OFFICER LANGHOFF: Okay. That's
19 fine.

20 MR. HEDINGER: That are stamped.

21 HEARING OFFICER LANGHOFF: That you intend
22 to offer? That's fine.

23 MR. HEDINGER: Yeah, just for simplicity.

24 MR. MERRIMAN: That's fine. That's what I

12

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1 would assume they would be doing.

2 HEARING OFFICER LANGHOFF: That's fine. I
3 just had a small question about that. So I apologize,
4 Mr. Hedinger. Your witness.

5 MR. HEDINGER: That's right.

6 Q. Mr. Oakley, Mr. Merriman
7 introduced you as the manager of the LUST claims unit at
8 the bureau of land of the EPA; is that correct?

9 A. That's correct.

10 Q. Can you tell me first off, how long have
11 you been in that position?

12 A. I've been manager since 1997. Prior to
13 that, I was a subunit manager, and I've worked in the
14 LUST claims since its inception in -- actually, the
15 legislation was passed in July of '89 and I started in
16 January of 1990.

17 Q. So you've been working with LUST claims
18 since 1990?

19 A. That's correct.

20 Q. And LUST, we're talking about the Leaking
21 Underground Storage Tank program?

22 A. Yes.

23 Q. And you're here today, you understand, on
24 the appeal of Ted Harrison Oil Company from a

13

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1 reimbursement decision that the agency has made,
2 correct?

3 A. Correct.

4 Q. And just for the record, you understand I
5 may refer to the IEPA as either the IEPA or the agency,
6 but that's your agency, correct?

7 A. That's fine, yes.

8 Q. And, again, this reimbursement appeal in
9 PCB 99-127, you're familiar generally with that
10 reimbursement decision that your agency made, correct?

11 A. Yes.

12 Q. And you personally were involved with that
13 decision, correct?

14 A. That's correct.

15 Q. Can you tell me just briefly for the

16 record, what your job descriptions were at the time
17 in -- I guess it was 1999 that the decision was made on
18 this reimbursement application?

19 A. Well, I was and am the manager of the LUST
20 claims unit, and such that we have a staff of 10
21 accountants that review these claims to make sure that
22 costs are eligible, reasonable and associated with
23 agency approved corrective action. And that was what I
24 was doing in this particular instance, overseeing the

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14

1 claims unit, yes.

2 Q. And when you say they are accountants on
3 your staff, are they certified public accountants?

4 A. No.

5 Q. What is their -- generally speaking, what
6 is their training and job requirements?

7 A. I have some college -- Bachelor's degrees.
8 Essentially, they have learned this program from its
9 beginning.

10 Q. Okay.

11 A. So they qualified as accounting titles by
12 taking tests through the State of Illinois.

13 Q. So we're talking about a civil service
14 accounting title?

15 A. Correct.

16 Q. And what is your own background, education
17 and training?

18 A. I have a degree in business from Lincoln
19 Land Community College.

20 Q. And beyond that, it's all been on-the-job
21 training in this unit?

22 A. Correct.

23 Q. I'd like to then ask you a little bit about
24 how your unit works, how it is organized and how reviews

15

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1 are done with that background. Can you please tell me
2 just generally how your unit works.

3 A. Well, when a claim is submitted for
4 payment, we, as I said earlier, review it to make sure
5 that costs are eligible and reasonable associated with
6 the agency approved corrective action plan. We deal
7 with them first in, first out. You know, the earliest
8 claim submitted is the one that gets reviewed first. I
9 mean, in a nutshell, that's it.

10 Q. And how are reviewers assigned to
11 reimbursement claims?

12 A. Whoever has finished one and whoever has an
13 opening at that particular point, they simply take

14 whichever is next on the list.

15 Q. Okay.

16 A. We have a list of dates received and claim
17 amounts, and they go to the top of that list and take
18 the next one.

19 Q. So there's no reviewer assigned to review
20 all claims by a particular applicant; is that correct?

21 A. That's correct.

22 Q. This file reflects two different kinds of
23 review, if I'm not mistaken. One is a fiscal review and
24 another is a technical review. Can you please describe

16

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1 the difference between those two kinds of review.

2 A. Well, I've never done a technical review.
3 That's essentially to make sure -- my understanding is
4 that they make sure the technical person, in this case,
5 Valerie Davis, to make sure the corrective action plan
6 has been followed accordingly, that the cleanup levels
7 have been met and so forth. That's my understanding of
8 a technical review.

9 Q. What bearing does that play on your
10 reimbursement decision making?

11 A. It's possible that they could -- the
12 technical people could notice something. For instance,

13 a line leak or something like that, that we wouldn't
14 notice on the accounting side of it. We're simply
15 looking at the numbers.

16 Q. Okay.

17 A. And eligibility and reasonableness of
18 costs.

19 Q. And would it also be fair to say that by
20 the same token, the technical review allows certainty
21 that work being billed is work that was necessary for
22 the particular cleanup?

23 A. Not necessarily.

24 Q. Okay. Well --

17

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1 A. In theory, yes, but -- --.

2 Q. Okay. Well, again, you know, this record
3 itself reflects that at some point, this reimbursement
4 application was sent to Valerie Davis for a technical
5 review. What was the purpose of doing that?

6 A. We send all claims that have incident
7 numbers of 10 years or older for technical review. We
8 send all claims over \$30,000 for technical review. And
9 the basic reason is to make sure that costs are
10 associated with an agency approved corrective action
11 plan.

12 Q. Okay. So the technical reviewer is to look
13 at the cost being billed and compare that to the work
14 that was being done and make sure that the work -- that
15 they match, correct?

16 A. Correct.

17 Q. Okay. Is the technical reviewer, does that
18 person's job duty or review duty extend to
19 reasonableness of the costs?

20 A. In some cases they make suggestions, yes.

21 Q. They make suggestions?

22 A. Mm-hmm, yes.

23 Q. Okay. Tell me what authority do the
24 technical reviewers have in terms of your own decision

18

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1 making?

2 A. Well, actually, their decisions generally
3 trump ours in that they are the project managers, and
4 so --

5 Q. And is that applied to all issues that they
6 may comment on?

7 A. Not necessarily all, no.

8 Q. Okay.

9 A. We would discuss -- we've had discussions
10 regarding issues that they have brought up that don't

11 necessarily -- that we wouldn't necessarily follow their
12 recommendation.

13 Q. And what types of issues are those?

14 A. We have had some, like, misunderstandings
15 regarding billing period dates and interpretations by
16 the technical staff that differ with our accounting
17 reviews. They sometimes don't see dates, but we
18 look at -- you know, dates are important to us. So
19 we -- and things of that nature.

20 Q. Okay. Well, you understand this
21 case -- one of the issues in this case involves some
22 handling charges?

23 A. Correct.

24 Q. Is that an issue, the reasonableness of

19

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1 handling charges, that would ordinarily be reviewed on a
2 fiscal review or a technical review?

3 A. It's usually done fiscally.

4 Q. Okay.

5 A. However, they can make recommendations.

6 Q. And what would be the basis or
7 the -- yeah. Upon what basis would they make any
8 recommendation?

9 A. If they perhaps noticed something that we

10 didn't, that would be the only -- generally, the only
11 time.

12 Q. What kind of training do the people in your
13 unit go through aside from just on-the-job training?

14 A. It's pretty much on the job.

15 Q. Okay.

16 A. And we've done this now for 13 years. So
17 we've got a pretty good grasp of it.

18 Q. Okay. And just again, for the training
19 purposes, you hire someone new and just give them a
20 reimbursement package, and then start walking through
21 the package with them?

22 A. We have someone mentor them, one of my
23 older claim reviewers.

24 Q. And how long does that mentoring process

20

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1 take?

2 A. That generally takes -- it's usually, I
3 want to say, close to a month --

4 Q. Okay.

5 A. -- before they actually physically do one.

6 Q. Okay.

7 A. Yeah.

8 Q. Does your unit use any policy or procedure

9 manuals?

10 A. Yes.

11 Q. Okay.

12 A. We use the Act, the administrative rules.
13 That's pretty much it.

14 Q. Just those two documents?

15 A. We have some in-house guidelines as far as
16 rates are concerned that we use.

17 Q. Okay. Do you have in-house guidelines
18 concerning reasonableness? Or is that what you mean?

19 A. Yes.

20 Q. Reasonableness of particular rates?

21 A. Yes.

22 Q. And what form do those in-house guidelines
23 take?

24 A. Well, they're simply -- we have a list of

21

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1 personal titles, duties and reasonable rates calculated
2 for that particular title. We have equipment, cost
3 associated with equipment. That's --

4 Q. Okay.

5 A. Yeah.

6 Q. And where did the information on those
7 lists come from?

8 A. We gathered those from actual claims
9 submittals over the years.

10 Q. So experience basically?

11 A. Exactly.

12 Q. Does that list change from time to time as
13 inflation moves those numbers up?

14 A. Yes, it does.

15 Q. And is the compilation of that information
16 solely done by your office? Or do you jointly do that
17 with other units at the --

18 A. We work with the technical staff on that
19 also.

20 Q. Okay. So they're involved in actually
21 making those lists?

22 A. Well, they -- I mean, we have like -- it's
23 just like one or two project managers over there that
24 get involved in this particular part of it. And in this

22

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1 particular case, I don't believe Valerie was involved in
2 gathering the actual rates.

3 Q. Okay. Tell me -- so gathering rates is a
4 case by case activity for your unit?

5 A. Well, I mean, we've gathered rates from
6 claim submittals from all over the state over the past

7 years and adjusted the rates accordingly.

8 Q. And I assume you have on this list of yours
9 for a particular job description, there would be a range
10 of acceptable --

11 A. That's correct.

12 Q. And so is it a matter -- just a simple
13 matter of the project manager, or rather, the reviewer
14 from your unit comparing a particular job title to a
15 particular job description on that list? And if it's
16 within the range, approve that?

17 A. Correct.

18 Q. Then explain to me again what role it is
19 that the technical staff play in compiling that list.

20 A. Well, as I said before, I've never done a
21 technical review. This is my interpretation as to what
22 the technical staff do. We simply -- we did our
23 accounting review; we send it over.

24 My understanding is that they look at it to

23

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1 make sure that costs are -- or actually the work is
2 performed in accordance with an agency approved plan.

3 I think Valerie could perhaps answer that
4 question better than me, because I'm more the accounting
5 side than the technical side.

6 Q. Okay. And I'm sorry. I think you
7 misunderstood the thrust of my question at this time.
8 I'm asking about the list that you created.

9 A. Okay.

10 Q. And I think you said that one or two people
11 from the technical staff worked with your staff in
12 preparing that list, and I was wanting to know what role
13 they played.

14 A. Well, they helped us gather some data also.

15 Q. Okay.

16 A. And then we crunch the numbers on our side.

17 Q. Okay.

18 A. Yeah.

19 Q. But Valerie wasn't one of them that helped?

20 A. No.

21 Q. At this time, I'm going to hand you -- I
22 only made two of these, but with the exception of the
23 top document, they're all directly out of the records.
24 The first one I copied a different version, so I'm not

24

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1 sure what page that is in the record. Try R15. It
2 starts at R15. It should have been 134.

3 MR. MERRIMAN: What was the --

4 MR. HEDINGER: 134. And the rest of them

5 are straight from the record, so.

6 MR. MERRIMAN: If you just mention the
7 record page, that will be fine.

8 MR. HEDINGER: If you want to see what I'm
9 handing the witness -- --.

10 Q. Okay. Mr. Oakley, I'm going
11 to hand to you a stack of documents that are marked
12 Petitioner's Exhibit -- that's Pet. Ex. Numbers 1
13 through 8. And those are all separately stapled as
14 separate exhibits. With the exception of Petitioner's
15 Exhibit 1, the rest of them are Numbers 2 through 8, and
16 all have the bate stamped number from the record at the
17 bottom right corner. Do you see those except for Number
18 1?

19 A. Date stamp?

20 Q. I'm sorry. Bates, the record numbers
21 stamp.

22 A. Oh, okay. Yes, I see those.

23 Q. The document that is marked as Petitioner's
24 Exhibit 1 is in the record, I believe, starting at

25

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1 page -- well, page 3 of that exhibit is of page 15 of
2 the fiscal record, and I know the rest of it is in the
3 record, but I'm not certain where.

4 MR. MERRIMAN: That should go pages 15
5 through 27.

6 MR. HEDINGER: That's correct.

7 THE WITNESS: Exhibit 1 is page 15 through
8 27?

9 MR. MERRIMAN: Yes.

10 THE WITNESS: Correct.

11 MR. HEDINGER: Correct. Except for the top
12 page, which is somewhere else -- but off the top of my
13 head, I'm not sure where it is at, but I know it's in
14 there.

15 THE WITNESS: Okay.

16 Q. (By Mr. Hedinger) But having said that, I
17 mean, looking at that Exhibit 1, are you familiar with
18 that document?

19 A. Vaguely.

20 Q. Okay. And with reference to that, what was
21 your understanding of what this document is?

22 A. It appears to be a summary of costs
23 associated with this particular claim submittal.

24 Q. Okay. And the third page of that

1 particular exhibit, what is your understanding of what
2 that is?

3 A. That appears to be an invoice from
4 Harrison's Environmental Solutions associated with
5 digging and hauling contaminated soil.

6 Q. Okay. And that's also associated with the
7 same reimbursement claim, correct?

8 A. Correct.

9 Q. All right. And on to Exhibit --

10 HEARING OFFICER LANGHOFF: For the Board
11 record, Mr. Hedinger, I'm going to ask you to identify
12 the pages of the record for your exhibit in your brief,
13 or however you want to do it.

14 MR. HEDINGER: I would intend to do that.

15 HEARING OFFICER LANGHOFF: Okay. Thank
16 you.

17 MR. HEDINGER: Yes.

18 Q. Mr. Oakley, on to Exhibit
19 Number 2. Can you identify that?

20 A. Yes. That is our final decision letter
21 regarding this particular claim.

22 Q. And that's your signature on it, correct?

23 A. Yes, sir.

24 Q. The attachment A to that?

1 A. Okay.

2 Q. Is that part of your letter?

3 A. Yes, it is.

4 Q. That's record pages 09 and 10, correct?

5 A. Correct.

6 Q. And I notice that we've also copied pages
7 11 and 12 from that record on that particular exhibit,
8 but that's not part of your letter, right?

9 A. No, that's correct.

10 Q. I just got a little overzealous in copying
11 those this morning, I believe.

12 So your letter is just the first four
13 pages, record pages 7 through 10, correct?

14 A. That's correct.

15 Q. Okay. Turn your attention then to Exhibit
16 Number 3. That's record pages 13 and 14. Do you
17 recognize that document?

18 A. Yes, I do.

19 Q. And can you explain what it is?

20 A. That is a request for more information in
21 regards to some -- apparently some subject contractor
22 invoices and missing documentation.

23 Q. Okay. And the date on that is November 9,
24 1998, correct?

1 A. Correct.

2 Q. And, again, that's your signature?

3 A. Yes, it is.

4 Q. I have more questions about each of these,
5 but for the moment, I just want to walk through them and
6 make sure we get a record as what they are. So if you
7 turn your attention to Exhibit Number 4, that's the
8 handwritten you have right now?

9 A. This one?

10 Q. Yes.

11 A. Oh, I see it. Okay.

12 Q. Do you know what that is?

13 A. Yes. I believe that was in response to one
14 of the questions on Exhibit Number 3.

15 Q. Okay. And this would specifically be the
16 submittal by the applicant of information concerning the
17 job description or job duties of Lori and Ted Harrison,
18 right?

19 A. Right.

20 Q. Which again, Exhibit Number 3, that would
21 be paragraph three?

22 A. That's correct.

23 Q. Petitioner's Exhibit Number 5, can you tell
24 us what this document is? And that's at page 30 of the

1 fiscal record.

2 A. That is a summary sheet that was prepared
3 by Cathy Elston.

4 Q. Cathy Elston was the staff person who did
5 the review of the --

6 A. She did the accounting review, correct.

7 Q. And she is one of your staff members?

8 A. Correct.

9 Q. On to Petitioner's Exhibit Number 6, which
10 starts at page 31 of the fiscal record and goes through
11 page 38.

12 A. Okay.

13 Q. Can you identify what this document is.

14 A. Well, it's a number of documents by this
15 top --

16 Q. Go through them. The top page, page 31 of
17 the record?

18 A. The top page is a memo from Cathy to me
19 that was attached to the claim when we sent it to the
20 technical section for technical review.

21 Q. Okay. So if I understand correctly, this
22 is dated October 26, 1998, right?

23 A. Right.

24 Q. And you attached this document to the

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1 package that goes to technical staff for review?

2 A. Correct.

3 Q. All right. And what is the record page 32?

4 A. It's a federal tax payer ID number and
5 legal status disclosure certification requirements
6 form. That was a form that we require for payment
7 purposes.

8 Q. And how about pages 33 and 34? I
9 guess -- I'm sorry. 33 through 36. That's another copy
10 of your --

11 A. Yes. That's another copy of a final
12 decision letter.

13 Q. Okay. How about 37 and 38? Do you
14 recognize those two pages?

15 A. These appear just to be notes from Cathy
16 and regarding the incomplete letter that was written,
17 which I made a notation here. She had discussed this
18 with me before we sent the incomplete letter.

19 Q. Okay. So these two pages, pages 37 and 38,
20 are her notes preceding Petitioner's Exhibit 3, which is
21 in the record as page 13, right?

22 A. Yes, that's correct.

23 Q. Turn your attention again to the first page
24 of this Petitioner's Exhibit Number 6.

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1 A. Okay.

2 Q. Down at the bottom quarter, bottom fourth,
3 bottom third of that page, there's a handwritten page
4 that says accounting cuts, and there's number 4, number
5 18, number 2. Do you see where I'm at?

6 A. Yes, I do.

7 Q. To the right of that, it says see
8 attached. Do you have any idea what was attached?
9 Might that have been these pages 37 and 38?

10 A. It might have, but I don't know to be
11 honest with you.

12 Q. Okay. Did you see this document before it
13 was sent to technical?

14 A. I'm sure I did, yes.

15 Q. And in fact, down at the bottom of that
16 first page on page 31 of the record, it says, "Needs
17 tech review." So this apparently was before the
18 technical review as you said, right?

19 A. Correct. I believe so.

20 Q. Now, your letter, your incompleteness
21 letter is dated November 9, and this memo is dated
22 October 26. Would there have been any additional review
23 before or after this first page, which is page 31, was
24 written prior to the sending out of your letter?

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1 A. Okay. Now, page 31 --

2 Q. And I apologize, but there is Petitioner's
3 Exhibit 6, and when I say page number --

4 A. Okay. I see.

5 Q. Unless I say it's with the exhibit, I'm
6 talking page in the records, so.

7 A. Could you repeat the question?

8 Q. Well, here's where I am going. This
9 document is dated October 26, and your letter,
10 Petitioner's Exhibit 3, is dated November 9, which is
11 only about two weeks apart. Would there have been any
12 additional review after this October 26th memo prior to
13 your letter going out?

14 A. Possibly.

15 Q. Okay.

16 A. There would have been a technical review.

17 Q. Okay.

18 A. I believe.

19 Q. Before your letter went out?

20 A. Before the final decision letter?

21 Q. No. I'm sorry. This is your deficiency
22 letter.

23 A. Oh, no, no.

24 Q. That goes out before the technical review?

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1 A. Yes.

2 Q. And would your staff typically only do one
3 review for fiscal purposes before a deficiency letter
4 goes out?

5 A. A deficiency letter, you mean like a final
6 decision or an incomplete?

7 Q. I'm sorry, yes. That would be incomplete
8 is what I'm talking about.

9 A. I see what you're saying. The answer is
10 yes.

11 Q. The answer is, yes, they would only do one
12 review, send out the incomplete letter when the
13 information comes back, then do a further final review?

14 A. Correct.

15 Q. All right. Then I'd like to turn your
16 attention to Petitioner's Exhibit Number 7, and that's
17 pages 39, 40 and 41 of the record, okay? Do you see
18 where I'm at?

19 A. Yes, I do.

20 Q. What is that document?

21 A. These appear to be notes from Valerie Davis
22 regarding her technical review.

23 Q. Okay. The first page looks like it's some
24 form of memorandum. Is that a typical form?

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1 A. Yes.

2 Q. This would be the form typically used by
3 the technical staff sending information back to your
4 staff?

5 A. Correct.

6 Q. And I see about a little over halfway down
7 that first page, page 39 of the record, the sentence
8 ends -- paragraph ends with the words "except as noted
9 below" colon. And is everything in that typed in by
10 whoever the technical reviewer is? In this case,
11 Valerie Davis?

12 A. Yes, I believe it was.

13 Q. Do you have any idea whose handwritten
14 notes are on that page?

15 A. No. I could only speculate.

16 Q. Would this document come back to you? Or
17 would this come back to, in this case, Cathy Elston?

18 A. It would come back through me. Then I
19 would give it to Cathy.

20 Q. You would review this before giving it to
21 Cathy?

22 A. Right. I don't do an in-depth review. I
23 do look at them, and I would just pass it on to Cathy

24 for a summary.

35

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1 Q. So you'd only do an in-depth if there was a
2 reason for you to?

3 A. Correct.

4 Q. And the last two pages of that exhibit,
5 which are in the record as 40 and 41, do you know what
6 those pages are?

7 A. They appear to be handwritten notes. And
8 I'm not sure if they are from Valerie, or they're from
9 Cathy, but they are some sort of handwritten notes. And
10 I assume they're from Valerie, but I don't know for
11 sure.

12 Q. Would you know Cathy's handwriting to know
13 whether that's hers?

14 A. Let's see. I'll have to go back.

15 HEARING OFFICER LANGHOFF: I don't think
16 he's asking you to compare the handwriting on the
17 document, Mr. Oakley. I think he's just asking you if
18 you'd recognize the handwriting, but he can correct me
19 if I'm wrong.

20 THE WITNESS: No.

21 Q. (By Mr. Hedinger) Yeah, I mean without
22 doing an analysis.

23

A. No.

24

Q. You don't know offhand if that's her

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1 handwriting?

2

A. No, I don't, to be honest.

3

Q. Have you seen those two pages before today?

4

A. Well, I assume I have. I don't know, to be

5

honest.

6

Q. Okay.

7

A. Yes.

8

Q. You don't recall looking at them and

9

discussing them before making your final decision then?

10

As you sit here today, you don't recall doing that?

11

A. No, I don't.

12

Q. All right. And finally turn to

13

Petitioner's Exhibit 8, which is pages 44 and 45 of the

14

record. Do you see where I'm at there?

15

A. Uh-huh, yes.

16

Q. Have you seen that document before?

17

A. Yes, I have.

18

Q. And, just, this would be the letter from

19

the applicant. In this case, it was from their

20

consultant, RAPPS Engineering, responding to your letter

21

of incompleteness, correct?

22 A. That's correct.

23 Q. The word "Cathy" is written, handwritten at
24 the very top of that. Was that meaning that this letter

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1 should be directed to Cathy Elston?

2 A. That's my handwriting, yes. I would have
3 looked at this letter and then written Cathy's name on
4 it.

5 Q. So this would -- even though it's addressed
6 to Ms. Cathy Elston, this would first come to your desk?

7 A. Yes.

8 Q. Is that typical procedure in your office?

9 A. Sometimes, not necessarily always.

10 Q. Okay.

11 A. It depends. Now, if Cathy were at her desk
12 that day and the mail clerk thought -- they sometimes
13 give it directly to the claim reviewers.

14 Q. Okay. But in this case, since you wrote
15 her name on the top, you apparently got this first?

16 A. Yes, in this case.

17 Q. Do you recall reading it first?

18 A. Yes.

19 Q. And it had attachments to it when you
20 received it, correct? They're identified in the

21 document.

22 A. Okay. Apparently, it did, yes.

23 Q. And in fact, paragraph three on the second
24 page of this exhibit identifies that handwritten note

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1 that we talked about a few minutes ago. That's
2 Petitioner's Exhibit Number 4, right?

3 A. That's correct.

4 Q. Do you recall looking those materials over
5 when they came in?

6 A. Yes, I do.

7 Q. Okay. Did you look those over yourself?
8 Or did you have someone with you and talk about them
9 when you first looked at them?

10 A. I believe Cathy and I talked about them.

11 Q. And this happened close to four years ago,
12 correct?

13 A. That's correct.

14 Q. How is it that you recall this particular
15 conversation? What stands out about it? Why is it that
16 it's memorable to you?

17 A. I never seen an invoice that billed that
18 many hours associated with these sorts of activities.

19 Q. Now, we're talking the time billed by Ted

20 and Lori Harrison, correct?

21 A. Correct.

22 Q. So it stands out because it was unusual?

23 A. Correct.

24 Q. And it was unusual because you'd never seen

39

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1 that many hours billed on this type of activity, right?

2 A. That's right.

3 Q. And when you say "this type of activity,"

4 can you be as specific as you can?

5 A. I would refer you to this description.

6 Q. Okay.

7 A. Acting as safety officers, controlling

8 speed.

9 Q. You're talking about what was written in
10 Petitioner's Exhibit Number 4, right?

11 A. That's correct.

12 Q. Okay. But you had seen -- and at that time
13 you had seen invoices larger than this, correct?

14 A. Oh, yeah, yeah.

15 Q. And you'd seen invoices for consultant work
16 that was larger than this, correct?

17 A. Larger, yes.

18 Q. Just different kind of work apparently, or

19 work that didn't meet the same description as what was
20 being described here, correct?

21 A. Correct.

22 Q. In your experience, and in particular at
23 that time, what would have been the amount that you
24 would have expected to have been charged for this work?

40

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1 A. That's speculation. I mean, I couldn't --

2 Q. Well, what would have been the range that
3 you would have anticipated by you, such that this
4 wouldn't stand out in your mind after four years?

5 A. Could you repeat that question?

6 Q. Well, I think I'm going to withdraw the
7 question. I'll probably come back to that later.

8 Right now, what I'd like you to do is
9 compare, or if you have it in front of you, Petitioner's
10 Exhibit Number 2, which is your final decision, correct?

11 A. That's correct.

12 Q. And your incompleteness letter, which is
13 Petitioner's Exhibit Number 3. Do you have those two
14 documents?

15 A. Yes, sir, I do.

16 Q. Great. The first of those two documents,
17 Petitioner's Exhibit Number 2, was your final decision.

18 I'd like to turn your attention to attachment A to that
19 please.

20 A. Okay.

21 Q. And I'd like to focus your attention on
22 paragraph three of that document.

23 A. Okay.

24 Q. Do you see where I'm at?

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1 A. Mm-hmm, yes.

2 Q. Now, comparing that paragraph 3 to the
3 items that are included on Petitioner's Exhibit Number
4 3, your incompleteness letter, it's true, isn't it, that
5 LFR 134, Harrison Environmental, 80,141.50, unreasonable
6 costs. You asked for additional information on that
7 back on November 9, 1998, right?

8 A. Correct.

9 Q. However, it's also true, isn't it, that you
10 did not ask for additional information concerning the
11 Prairie Analytical invoices or the Harrison
12 Environmental 15 percent markup, correct?

13 A. Apparently, we did ask for some invoices
14 legible in paragraph 2 of Exhibit 3. We had asked for
15 legible copies of subcontractor invoices and receipts
16 for field purchases.

17 Q. That corresponds to paragraph two of your
18 attachment A of your final decision, right?

19 A. It appears to, yes.

20 Q. Can you find any place in your November 9,
21 1998 letter where you asked for additional information
22 about the 24-hour turnaround charges for Prairie
23 Analytical?

24 A. No, I don't.

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1 Q. Yeah, and neither did you ask for any
2 further information concerning Harrison Environmental's
3 15 percent markup, correct?

4 A. That's correct.

5 Q. Can you tell me why you did not ask for
6 that information before rendering your final decision?

7 A. No.

8 Q. Okay. I am not going to introduce this as
9 an exhibit because this is my copy, but I'm going to
10 show you what's in the record, starting at page 1 of the
11 fiscal record, and ask if you've seen that before.

12 A. Yes, I believe I have.

13 Q. Okay. Can I see that?

14 A. Yes.

15 Q. On page two of that letter, which is page

16 two of the fiscal record, there's a highlighted and
17 bullet-point portion concerning all Prairie Analytical
18 invoices, with an explanation for the 24-hour turnaround
19 charges. Do you see where I'm pointing to?

20 A. Yes, I do.

21 Q. Do you recall reviewing that information
22 previous to today?

23 A. Well, we're talking four years ago here.
24 So I assume I looked at these documents.

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1 Q. But you don't have any independent
2 recollection of reviewing it and passing judgment on it
3 or anything?

4 A. At this point in time, no.

5 Q. Could you take just a couple of minutes and
6 read those two paragraphs of that letter for me. Just
7 let me know when you're done reading them.

8 A. Okay.

9 Q. Essentially that -- I'm going to paraphrase
10 what I think that says, and you can tell me what you
11 think that this would be. The RAPPs engineering
12 explanation that the four-hour turnaround charges for
13 actually a cost savings effort, because without those
14 charges there would have been increased mobilization

15 charges and other types of charges associated with
16 basically the dig and haul that was occurring at that
17 time; is that correct?

18 A. That is RAPPS' opinion, yes, yeah.

19 Q. Okay. Is that the type of explanation that
20 you would find to be a reasonable justification for
21 24-hour turnaround charges?

22 A. The accounting side, what we would do is
23 tag -- if we see these 24-hour turnaround charges,
24 generally we would tag those, and ask the technical

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1 person if there was any reason in their mind for a
2 24-hour turnaround.

3 Q. Okay. And your office does not personally
4 even review the technical file, correct?

5 A. Correct.

6 Q. So you wouldn't know whether those charges
7 were incurred at a time of active site management or
8 not, would you, without being told either by the
9 applicant or the technical staff?

10 A. That's correct.

11 Q. Okay. Your office does allow markups to be
12 made on invoices in certain circumstances, correct?

13 A. Correct.

14 Q. And in fact, the statute and regulation
15 both recognize those as legitimate charges, correct?

16 A. Correct.

17 Q. In this case, what would have been the
18 legitimate charge if markups had been approved; do you
19 know? Would it have been 15 percent, 12 percent, some
20 other amount?

21 A. Well, it depends on when the work was
22 performed. It's in the statute. A sliding scale
23 was -- went into regulation. I believe this was in
24 '92.

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1 Prior to that, we allowed a 15 percent
2 markup. But statutorily it went into effect in '92,
3 which imposed a sliding scale based on the -- you add
4 all the invoices together, then apply the sliding scale
5 based on whatever that amount would be. I believe it
6 ranges from 12 percent -- I believe it starts at 12
7 percent and goes up or down, depending.

8 Q. But you would have just followed that
9 formula?

10 A. Correct.

11 Q. Now, is it your office or is it the
12 technical staff that determines the applicability of

13 markups?

14 A. It could be either.

15 Q. And under what circumstances would it be
16 your office?

17 A. Well, generally, we look for markups. We
18 look to see if the prime contractor did -- hired
19 subcontractors to perform some of the work. That's
20 generally what we do in our review.

21 Q. Under what circumstances would it be the
22 technical staff that made that determination?

23 A. Well, they might perhaps disagree with us
24 as to who is the prime contractor.

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1 Q. Okay. So there would just simply
2 be -- you'd be both doing the same review? It would
3 just simply be a matter if they took note of something
4 if they disagreed with or saw that you didn't see,
5 something like that?

6 A. Correct.

7 Q. There's no policy saying this one is one to
8 be reviewed by technical staff rather than fiscal staff?

9 A. No. It's a joint effort.

10 Q. And where do you look to find your source
11 of information as to who a prime contractor is?

12 A. Well, we've reviewed thousands of these
13 claims, and it's just common sense.

14 Q. So you're not aware of any definition in
15 the regulations or the statute that would guide you in
16 that?

17 A. I don't know that there's a definition in
18 the regs. or the statute. I don't believe so.

19 Q. And you don't have any internal policy
20 manual that defines that, do you?

21 A. We have an in-house document that we have
22 relied on in the past that just essentially says that a
23 prime contractor -- it defines a prime contractor is
24 someone that hires subcontractors, pays subcontractors

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1 and so forth.

2 Q. And what document is that? Is that the
3 LUST project manager's manual?

4 A. Well, there's all sorts of documents that
5 we -- you know, I mean, I don't know. It could be that
6 particular one. I don't believe so. I believe it's
7 probably a document that we have in-house that we use in
8 accounting to define what a prime contractor would be.
9 But essentially, it's more common sense than anything.

10 Q. But the document, is it part of a larger

11 document? Or is it a one-page description or --

12 A. Well, we have documents that we refer to,
13 and accounting reviews a number of different documents
14 associated with our letters and our rates and so on. I
15 mean, I don't know that the exact particular
16 document -- I mean, I wouldn't know that. We have lots
17 of in-house documents that we use in order to perform
18 these reviews and write these final decisions.

19 Q. And I apologize if I'm confusing you, but
20 you're confusing me. I'm just trying to get this
21 clarified.

22 If I understood you correct, there is a
23 document that has some sort of a definition that your
24 staff can look to for guidance as to what a prime

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1 contractor is?

2 A. Yes.

3 Q. That is true?

4 A. Yes. I believe so, yes.

5 Q. And this document, is it in the form of a
6 form letter? Is it in a form that's filled out? Is it
7 simply a guidance document that your staff can read and
8 review? Is it part of a larger manual? Can you
9 describe it for me?

10 A. Well, we don't have a manual, per se. We
11 have -- well, I guess you could call it a manual. We
12 just have a group of documents that we refer to that
13 lists rates, it lists denial points, ineligible costs
14 and eligible costs and so forth.

15 Q. And other issues that come up frequently
16 having to do with your reimbursement decisions?

17 A. Correct.

18 Q. And included in that is this decision or
19 this issue of how do you define a prime contractor?

20 A. Correct.

21 Q. And is this group of documents something
22 that every new employee is handed when they start to
23 work for you?

24 A. Yes.

1 Q. Is it a bound volume?

2 A. Bound, in that it may have rubber bands
3 around it, but I mean, it's not like a -- I don't know
4 what you mean by bound. It has rubber bands around it,
5 yes.

6 Q. It's pages that are rubber-banded together?

7 A. Yes. In some cases, they'll put them in
8 binders, but just essentially it's just a group of paper

9 associated with doing claim reviews that we've gathered
10 over the years.

11 Q. If, for instance, somebody came with some
12 novel question, you did some research, had the legal
13 staff do some research, have one of your staff do the
14 research, came up with a memorandum on that issue, that
15 memorandum would become a part of this?

16 A. Correct.

17 Q. Okay.

18 A. Correct.

19 Q. And somewhere along the line, somebody did
20 a page or two on this prime contractor issue?

21 A. Yes.

22 Q. And now that's part of this compilation?

23 A. Yes.

24 Q. Do you have any recollection of who it was

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1 who drafted that page?

2 A. I believe that page was drafted by -- and
3 once again, this is old -- but I believe John Steller,
4 who was my previous boss, drafted the definition of a
5 prime contractor.

6 Q. Do you have any idea when?

7 A. To be honest with you, no. I would assume

8 it would have been early in the program, perhaps even as
9 early as '90, '91, but that's speculation. I mean, I
10 don't know the exact date.

11 Q. Can you tell me, does the statute limit
12 these markups to prime contractors? Is that word
13 included -- those two words included in the statute?

14 A. I don't think so.

15 Q. How about the regulations?

16 A. I think it is now, but at that time, I
17 don't believe it was. It's simply a business decision
18 that was always done.

19 Q. I'd like to turn your attention to the
20 record again in the fiscal record. I want you to look
21 at pages 198 and 201. And I'm handing those to you
22 now.

23 A. Okay.

24 Q. Look at the very bottom of those two pages,

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1 if you would. Well, first look at the pages generally,
2 so you know what they are.

3 A. Okay.

4 Q. Okay? And you're looking at 198 and 201
5 both? And those are invoices from Western Environmental
6 Service, correct?

7 A. Correct.

8 Q. Just looking at those invoices, can you
9 tell me what they were for?

10 A. It appears to be drilling and sampling and
11 monitor well installation.

12 Q. It was your understanding that Western
13 Environmental was the prime contractor on this job?

14 A. I've always believed that RAPPs was the
15 prime contractor.

16 Q. At the bottom of that page, there's listed
17 a 15 percent markup. Can you tell me what that would be
18 for?

19 A. I assume that they had to have bought some
20 material, and they marked it up 15 percent.

21 Q. Is that standard? Is that an expected
22 result?

23 A. Perhaps that is standard from Western
24 Environmental's viewpoint.

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1 Q. I mean from your viewpoint, from your
2 agency, is that something you would approve?

3 A. If this work was incurred after the
4 statutory handling charges were established, then I
5 would believe that this would have been in error.

6 Q. Okay. Look at Petitioner's Exhibit Number
7 7, if you would. We have lots of papers here in front
8 of you, don't we?

9 A. Okay.

10 Q. Look at the last page of that document, if
11 you would. I think you testified earlier that you're
12 not certain whose work product this is, right?

13 A. That's correct.

14 Q. This would be either Valerie Davis or Cathy
15 Elston?

16 A. Correct.

17 Q. I noted the last two lines of what's in the
18 record of page 41, whoever drafted this took note of
19 those Western handling charges. Do you see that?

20 A. Yes, I do.

21 Q. And they actually reduced it to 12 percent,
22 correct?

23 A. Correct.

24 Q. Would that have been correct? Or is that

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1 an error?

2 A. I believe that would have been correct.

3 Q. So it was okay for Western to get a
4 handling charge? It should have just been reduced to 12

5 percent?

6 A. It appears that way.

7 Q. What did Western do that warranted the
8 handling charge?

9 A. It appears they bought some material.

10 Q. I'm sorry. I took the documents away from
11 you. So let me give them back. If you need to refer to
12 them --

13 A. It appears they bought some material
14 associated with this well. However, if I were doing
15 this review, I would ask what material they bought, and
16 I would require receipts for that material.

17 Q. So even though Western wasn't the prime
18 contractor, they were still allowed to mark up any
19 purchase that they made for this job, correct?

20 A. Correct.

21 Q. All right. Let me take that back from you,
22 if you don't mind.

23 And I'd like to turn to your final decision
24 letter, Petitioner's Exhibit Number 2. And, again, that

1 letter is dated January 25, 1999. If you would please,
2 turn to the first page of attachment A. Again, that's
3 in the record of page 9 of the fiscal record. And turn

4 your attention to paragraph three on that page. Do you
5 see the last item in that paragraph concerning 15
6 percent markup, correct?

7 A. Correct.

8 Q. Now, this attachment, this is basically
9 your work product, or at least you signed the letter
10 that this attachment accompanied, correct?

11 A. Correct.

12 Q. And those two lines say Harrison
13 Environmental, \$33,250.07, 15 percent markup can only be
14 taken by primary contractor, which was RAPPS, okay?

15 A. Mm-hmm, yes.

16 Q. All right. And just a minute ago, you said
17 you'd always understood that RAPPS was the primary
18 contractor on this matter, correct?

19 A. That's what I understood, correct.

20 Q. Do you have a form -- does the agency use a
21 form that asks the applicant to identify the prime or
22 primary contractor?

23 A. Yes. We have it on billing forms.

24 Q. Was that done in this case?

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1 A. I believe so. I don't know that -- I
2 didn't review the claim myself. I don't have a copy of

3 the claim.

4 Q. Okay. Now, is the contractor on your
5 billing forms identified with those words, "primary
6 contractor"?

7 A. I don't know. It might just say
8 contractor. I'm not sure. I'd have to look at it.

9 Q. All right. Well, if you can give me just a
10 minute, I'll see if I can find it for you.

11 A. Okay.

12 MR. HEDINGER: Help me, Dan, if you know
13 where it's at.

14 Q. Is it the owner/operator and
15 professional engineer billing certification form?

16 A. No. It should be -- there might be a
17 subcontractor form there. I don't know that it
18 specifies prime.

19 MR. HEDINGER: Can we go off the record for
20 just a moment?

21 HEARING OFFICER LANGHOFF: Sure.

22 [Off-the-record discussion.]

23 HEARING OFFICER LANGHOFF: We're back on
24 the record. Thank you.

1 Q. (By Mr. Hedinger) Mr. Oakley, I'm going to

2 hand to you what's in the record on page 55. Is this
3 the document you're talking about?

4 A. Well, actually, I was more referring to the
5 actual, like, subcontractor sheet that would list -- I
6 don't know that it says primary contractor. I believe
7 it says contractor at the top. But this document would
8 also ask for that information.

9 Q. Well, that particular -- go ahead.

10 A. Okay. This is used for Women's Business
11 Enterprises.

12 Q. Yeah.

13 A. And so forth. But I believe either
14 document would work as far as determining who the prime
15 contractor would be.

16 Q. Well, of course, that document doesn't
17 identify anyone as the prime contractor, right?

18 A. That's correct, or any subcontractors.

19 Q. Yeah. We know that's not true.

20 A. Right.

21 Q. So it couldn't have relied too heavily on
22 this?

23 A. Not on that one, no. Our regular agency
24 forms, though, I believe list contractor. I don't know

1 that they say the word "prime," but I think the
2 intention is that you would infer that the prime
3 contractor met all the requirements regarding payment
4 and so forth, and procuring subcontractors as is
5 statutorily defined.

6 Q. As what is statutorily defined?

7 A. Handling charges.

8 MR. HEDINGER: Well, I'm going to ask to do
9 something if you wouldn't mind, Dan. Can we hand him a
10 copy of your record, and let him read through it and see
11 if he can find the form? I'd hand him mine, but mine is
12 taken apart. I'm afraid all the papers would be
13 scattered.

14 MR. MERRIMAN: That's all right.

15 Q. (By Mr. Hedinger) This would be in the
16 fiscal, right -- file, right? It wouldn't be in the
17 technical file?

18 A. Right. It should be in the fiscal file.

19 HEARING OFFICER LANGHOFF: Let's go off the
20 record for two minutes.

21 MR. HEDINGER: Okay.

22 HEARING OFFICER LANGHOFF: Let's go off the
23 record.

24 [Brief break.]

1 HEARING OFFICER LANGHOFF: We're back on
2 the record.

3 I want the record to reflect we did locate
4 the copy of the administrative record. And Mr. Oakley
5 has had a chance to take a look at the Board's copy.
6 Okay. Your witness, Mr. Hedinger.

7 MR. HEDINGER: Thank you.

8 Q. Mr. Oakley, you have had a
9 chance to look through there. Did you identify the
10 documents you're speaking of?

11 A. No, I didn't. I don't believe it's in
12 here.

13 Q. Does that mean it doesn't exist, or might
14 it have been separated? And let me rephrase the
15 question.

16 Would you have approved this application
17 without that form?

18 A. Yes.

19 Q. So it's not a required form?

20 A. It's -- the agency developed billing forms
21 on a time/material basis, and we allow a submittal
22 on -- it doesn't have to be on agency forms as long as
23 it follows a time and material format. In other words,
24 we didn't want to penalize owners that submitted their

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1 bills for simply not using our forms.

2 Q. So aside from the requests that were
3 denied, this application did contain the necessary
4 information for at least the information of the claims
5 that were allowed?

6 A. Correct.

7 Q. It just wasn't in -- some of it at least
8 wasn't in or on the specific form that the agency
9 utilizes for that purpose?

10 A. Correct.

11 Q. All right. Well, then if we didn't have
12 that form -- and again, I'm turning back to Petitioner's
13 Exhibit Number 2. And, once again, attachment A, first
14 page of attachment A, which is page nine of the record,
15 and I want you to look at paragraph three of that, last
16 item in paragraph three.

17 The primary contractor, which was RAPPS, is
18 the words used in that paragraph. You don't have the
19 form that identified RAPPS as the primary contractor.

20 And so my question is, what information did
21 you have that led you to conclude that RAPPS was the
22 primary contractor?

23 A. I believe RAPPS had submitted claims prior
24 to this and had submitted most, if not all, the

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1 technical documentation associated with this particular
2 claim, or this particular site. So I believe that's
3 what led us to believe that RAPPS would have been the
4 primary contractor.

5 Q. So I want to break that down. If I
6 understood you, there are two examples. One, RAPPS had
7 previously submitted reimbursement claims, correct?

8 A. I believe so. I believe so.

9 Q. And number two, RAPPS is doing the
10 environmental consulting work for the site? I mean, I'm
11 paraphrasing you. But the second part of it was --

12 A. I believe RAPPS had submitted all or nearly
13 all the technical documentation previously. That's what
14 I believe.

15 Q. Okay.

16 A. And, generally, a primary contractor would
17 do that.

18 Q. Okay. Is that required by the regulations?

19 A. To submit technical documentation?

20 Q. That the primary contractor submit the
21 technical documentation.

22 A. No.

23 Q. In fact, the statute requires that
24 technical documentation be signed off on by a licensed

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1 professional engineer, correct?

2 A. I believe so.

3 Q. And, again, at no point did you inquire of
4 the applicant as to further information concerning
5 primary contractor, correct?

6 A. Did we specifically ask the question in our
7 letter, our incomplete letter? Correct, you're right.
8 We didn't.

9 Q. Okay. The agency, and specifically your
10 unit, will approve reimbursement for the charges of a
11 remediation site supervisor, correct?

12 A. Correct.

13 Q. And typically, the remediation site
14 supervisor has a fairly broad job description, right?

15 A. Typically.

16 Q. I mean, their job, viewed broadly, is
17 general oversight of the entire site project, right?

18 A. Right.

19 Q. And that will include such things as
20 ordering materials, right?

21 A. I believe that could, yes.

22 Q. Making sure site safety measures are
23 maintained, correct?

24 A. Correct.

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1 Q. Assuring that safe traffic patterns are
2 maintained as trucks and other equipment come and go
3 from the site, right?

4 A. That's possible.

5 Q. Making sure that the right amount of labor
6 is there when needed?

7 A. That's possible.

8 Q. Making sure that all of the workers and
9 subcontractors on site are performing their jobs safely
10 and in safe manner?

11 A. That could be done by a site supervisor.

12 Q. Also if they are lacking in labor, a site
13 supervisor may fill in on that job when needed, correct?

14 A. That could happen, yes.

15 Q. A site supervisor also is going to be
16 responsible for dealing with any inquiries that may come
17 in concerning the project, including inquiries from the
18 public, correct?

19 A. See, you're asking me to define what
20 a -- you know, what all the activities associated with a
21 site supervisor is. And, frankly, I mean, I don't know
22 the exact activities of an oversight supervisor
23 anywhere. I mean, I could speculate that, yes, but I

24 don't know for sure, for certain that all site

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1 supervisors do these sorts of activities.

2 Q. Okay. But --

3 A. It's possible. It could be done by a PE.

4 It could be done --

5 Q. This seems to be unreasonable charges for

6 someone who is essentially a site supervisor?

7 A. Right -- pardon me?

8 Q. These would not be unreasonable activities

9 for someone identified as a site supervisor?

10 A. It depends on the situation.

11 Q. Right. How about keeping records of the

12 work that's being done? Is that something that a site

13 supervisor could legitimately bill for?

14 A. That's possible.

15 Q. I know this is -- you didn't bring that

16 chart with you that have your rates, correct?

17 A. Correct.

18 Q. To the best of your recollection, what's

19 the range of approvable values for a site supervisor

20 hourly rates?

21 A. I don't know to be honest. I'd have to

22 refer to the document.

23 Q. Well, would \$30 an hour seem reasonable?

24 A. I would think so, yeah.

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1 Q. How about 110?

2 A. That sounds -- I don't know. I'd have to
3 refer to the document. I mean, those rates have changed
4 over the years. Competition has driven some of them
5 down. And in other cases, they've increased. I'd have
6 to refer to the document in order to make that
7 decision.

8 Q. Well, again, Petitioner's Exhibit Number 2,
9 the first page of attachment A, paragraph three, the
10 second item discussed in that paragraph is LFR 134,
11 Harrison Environmental, \$80,141.50 in unreasonable
12 costs. Do you see where I'm looking there?

13 A. Yes, I do.

14 Q. And that was with reference to the
15 information provided in Petitioner's Exhibit Number 4,
16 correct?

17 A. Correct.

18 Q. So when making the decision that that
19 \$80,141.50 was unreasonable, you had before you and you
20 considered the information in Petitioner's Exhibit 4,
21 right?

22 A. Right.

23 Q. Did you have any other information other
24 than that?

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1 A. Other information in what respect?

2 Q. Any other information concerning the work
3 that was performed.

4 A. We had an invoice.

5 Q. And that was --

6 A. That was --

7 Q. That's Petitioner's Exhibit 1, right?

8 A. Where's 1? Oh, correct.

9 Q. Did you have any other information than
10 those two things?

11 A. Not that I'm aware of.

12 Q. You're aware, or are you aware that this
13 reimbursement application is concerning activities at
14 essentially two separate sites?

15 A. No, I wasn't aware of that.

16 Q. I'm sorry? You were not aware of that?

17 A. No.

18 Q. Would that have made a difference to you in
19 making your determination concerning the reasonableness
20 of that \$80,141.50?

21 A. So there's costs -- let me get this
22 straight. So there's costs in here that aren't even
23 associated with this site?

24 Q. Well, and I don't want to mislead you.

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1 Essentially, there's a land farm involved. So there was
2 dig and haul from one site transport to another site,
3 and application of the contaminated soil at that second
4 site. And if this application concerned activities at
5 both of those sites, would that have made a difference
6 in your analysis?

7 A. It's possible.

8 Q. I'm going to show you what's in the record
9 at page 52. And. Actually, you've got the Board's
10 record there if you want to look at that.

11 A. Okay. The fiscal --

12 MR. MERRIMAN: Fiscal record.

13 Q. (By Mr. Hedinger) Fiscal record, page 52.

14 A. Okay.

15 Q. Can you identify that document?

16 A. It's an owner/operator and professional
17 engineer billing certification form.

18 Q. And it's signed by a professional engineer,
19 correct?

20 A. Correct.

21 Q. Does the statute require the professional
22 engineer to sign that?

23 A. I don't know that it's statutorily
24 required, but we've always required this as part of the

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1 billing certification.

2 Q. Do you have a professional engineer on your
3 staff who reviews these?

4 A. No.

5 Q. You're not a professional engineer?

6 A. No.

7 Q. And Cathy is not a professional engineer?

8 A. No.

9 Q. How about Valerie Davis, do you know
10 whether she's a professional engineer?

11 A. I don't know. I don't think so, but I
12 don't know. They have professional engineers on the
13 technical staff.

14 Q. Okay. If you will give me just a second
15 here, I think I'm finished.

16 One additional question, Mr. Oakley. You
17 said you reviewed the invoices that are in Petitioner's
18 Number 1 and also the handwritten description of job

19 duties as Petitioner's Number 4. Do you have any reason
20 to question whether these activities were actually
21 undertaken?

22 A. No, I don't question it.

23 MR. HEDINGER: Okay. That's all the
24 questions I have, sir.

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1 HEARING OFFICER LANGHOFF: Thank you,
2 Mr. Hedinger.

3 Mr. Merriman?

4 MR. MERRIMAN: Thank you.

5 HEARING OFFICER LANGHOFF: Do you want to
6 ask Mr. Oakley all your questions now, and then --

7 MR. MERRIMAN: Yeah, if that would speed
8 things up, I think.

9 HEARING OFFICER LANGHOFF: Well, since he's
10 going to be here all day, it doesn't really matter, but
11 the other witnesses I assume were doing it that way.
12 That's what we talked about. Okay, I apologize. Go
13 ahead, Mr. Merriman.

14 MR. MERRIMAN: Thanks.

15 EXAMINATION

16 QUESTIONS BY MR. MERRIMAN:

17 Q. Mr. Oakley, I would like to ask you a

18 couple things about the fiscal record there. Could you
19 turn to page 58 in the record. You previously looked at
20 that.

21 A. Okay.

22 Q. For the record, that is an invoice from
23 Harrison's Environmental Solutions?

24 A. Correct.

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1 Q. And it lists on that invoice a number of
2 subcontractors, and there's a plus 15 percent. That's
3 the handling charge you referred to; is that right?

4 A. Correct.

5 Q. So the \$33,250.77 handling charge that's at
6 issue in this particular reimbursement package basically
7 is derived from this invoice?

8 A. I believe so, yes.

9 Q. Now, there's a rather lengthy discussion
10 that you had with Mr. Hedinger about prime contractors
11 and the definition of prime contractor. But let me ask
12 you, can handling charge be earned by someone who is not
13 a contractor or doesn't acquire any field purchases?

14 A. No.

15 Q. By field purchases, just again for the
16 record, you mean material, expendable material, that are

17 purchased in connection with a particular job; is that
18 right?

19 A. That's correct. That was the intent.

20 Q. This case is one that we refer within the
21 agency as an old law case; is that right?

22 A. That's correct.

23 Q. Contrasting that with the new law, which
24 isn't all that new anymore, can you explain what that

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1 is, what that means?

2 A. Old law sites -- my understanding is that
3 the cleanup levels are somewhat more stringent under old
4 law sites. Do you have a specific --

5 Q. Let me interrupt you. I guess I mean more
6 general than that.

7 Isn't it true that the new law refers to
8 Title 16 as it presently appears in the Act as
9 supplemented by Part 732 of Title 35 of the Illinois
10 Administrative Code, the LUST regulations?

11 A. [Witness indicated.]

12 Q. You're nodding. Is that --

13 A. I'm familiar with those.

14 Q. And that's what we refer to as new laws; is
15 that right?

16 A. That's correct.

17 Q. And in fact, that new law came into effect
18 back in 1993, and the regulations in September of
19 1993 -- and the regulations became effective the
20 following year in September of 1994?

21 A. That's correct.

22 Q. And in this particular case, the release of
23 petroleum occurred prior to 1993; isn't that right?

24 A. Yes.

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1 Q. And it was reported to the Illinois
2 Emergency Management Agency, I guess, the time it was
3 reported? It used to be called ESDA. But prior to the
4 September 13, 1993 case?

5 A. That's correct.

6 Q. And cases such as that, that have a release
7 reported prior to the effective date of Title 16 may opt
8 into the Title 16 Program; is that right?

9 A. That's correct.

10 Q. And is it your understanding that this case
11 did or did not opt in? Or that this site did not opt
12 in?

13 A. I don't believe they did.

14 Q. I mean, in fact, again, you probably aren't

15 aware of this, but the Board previously found that in a
16 ruling on a motion in this case -- but this is an old
17 law case. Mr. Oakley, the sections of Title 16
18 presently in the Act, do they apply to old law cases?

19 A. No.

20 Q. In fact, pursuant to the effective law
21 provisions, we go back and look at former Section 2218
22 and 2218 (b) of the Act as it existed prior to 1993; is
23 that right?

24 A. That's correct.

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1 Q. And that's where the definition of handling
2 charge that you referred to came from; is that right?

3 A. That's correct.

4 MR. MERRIMAN: Unfortunately, I didn't
5 bring a copy of the Act. The Board can take official
6 notice of the language of the specific provision, and I
7 have a copy of it. I'd like to show Mr. Oakley just to
8 clarify that that's what he's referring to when we talk
9 about handling charge.

10 And, specifically, it's the language of
11 former Section 2218 (b) (i).

12 Q. Mr. Oakley, I'm going to
13 hand you a copy of the statute. And, again, the Board

14 can take administrative notice of this, but I just want
15 to refer you to 2218 (b) (i), the provisions there.
16 Just to ask you after having taken a look at that, if
17 that's your recollection and understanding of the
18 handling charge as we've referred to it here.

19 A. Yes, it is.

20 Q. Prior to the effective date of the
21 provision that we just mentioned that was in the
22 statute, there was no statutory definition or limit on
23 handling charge, was there?

24 A. No.

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1 Q. And the agency just applied a percentage to
2 the handling charge based on its experience and its
3 customary usage?

4 A. Correct.

5 Q. And that was the 15 percent that you
6 referred to earlier in your testimony?

7 A. Correct.

8 Q. And the statutory provision put in a
9 sliding scale?

10 A. That's correct.

11 Q. And so it depends on the amount of the
12 subcontractor, the field persons?

13 A. Correct.

14 Q. The statutory provision contained a
15 definition of handling charge, didn't it?

16 A. Yes, it did.

17 Q. And it said that a handling charge means
18 administrative insurance and interest costs and a
19 reasonable profit for procurement oversight and payment
20 of subcontracts and field purchases, correct?

21 A. That's correct.

22 Q. So in order to be entitled to a handling
23 charge, it would follow then that someone has to have
24 incurred those kind of costs, right?

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1 A. That's correct.

2 Q. Procurement, oversight, payment of
3 subcontracts or purchases?

4 A. That's correct.

5 Q. Now, again, referring you back to page 58
6 of the agency's fiscal administrative record, it's
7 Harrison Environmental Solutions who are seeking the
8 \$33,250.77 handling charge in this case, right?

9 A. Correct.

10 Q. On that invoice about the middle there, for
11 example, there's a reference to Prairie Analytical. Do

12 you see that?

13 A. Yes, I do.

14 Q. I'm going to ask you, if you would, turn to
15 page 65 of the fiscal record.

16 A. Okay.

17 Q. And that, for example, is a Prairie
18 Analytical Systems, Inc., invoice, right?

19 A. Correct.

20 Q. And who is that invoice to?

21 A. Harrison Oil Company.

22 Q. Harrison Oil Company? Not Harrison
23 Environmental?

24 A. That's correct.

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1 Q. Or Harrison Environmental Solutions?

2 Okay.

3 Turn to page 67, if you would.

4 MR. HEDINGER: I'm going to object at this
5 time. It seems to me the direction Mr. Merriman is
6 going is attempting to add to the basis for the agency's
7 decision, but Mr. Oakley has already testified as to
8 what that basis was, and it's also in the record. And
9 the agency's final decision on the reimbursement
10 application and this matter is framed by and formed by

11 the bases for ruling that the agency has identified.

12 HEARING OFFICER LANGHOFF: Mr. Merriman?

13 MR. MERRIMAN: Well, in response to that, I
14 would say that I don't think I'm attempting to add or
15 modify anything, other than clarifying.

16 Attachment A -- and Mr. Hedinger is
17 correct, that attachment A, and written reasons for the
18 decision set out in attachment A define the issues in
19 this case. And attachment A at paragraph three says
20 that the sum total of \$116,732.82 deductions were made
21 and costs that the owner/operator failed to demonstrate
22 were reasonable. That's the basis -- that's the
23 statutory basis for the denial. The individual items
24 including the handling charge.

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1 HEARING OFFICER LANGHOFF: Mr. Merriman,
2 that information is before the agency when they made
3 their decision; is that correct?

4 MR. MERRIMAN: Yes, it was.

5 HEARING OFFICER LANGHOFF: Anything else,
6 Mr. Hedinger?

7 MR. HEDINGER: Yeah. I mean, the document
8 itself says that the reason why the 33,250.77 markup is
9 unreasonable is because the markup can only be taken by

10 the primary contractor, which was RAPPS. Mr. Merriman
11 is trying to create some new basis for that ruling, and
12 apparently he's trying to say, well, it wasn't RAPPS at
13 all. It was Harrison Oil Company.

14 HEARING OFFICER LANGHOFF: No, I'm going to
15 overrule your objection and have Mr. -- let
16 Mr. Merriman ask the questions and make his argument in
17 his brief. You can make your argument at that time.

18 MR. MERRIMAN: Okay.

19 Q. Page 67 for example.

20 HEARING OFFICER LANGHOFF: For the record,
21 I'm going to overrule the objection. I don't know if I
22 did that.

23 MR. MERRIMAN: Thank you.

24 Q. That is an invoice from

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1 Ishmael Construction Company?

2 A. Correct.

3 Q. And that is addressed to whom?

4 A. Harrison Oil Company.

5 Q. I think that we have that on pages 67 and
6 71 and 73, and they are additional Prairie Analytical
7 Systems invoices; is that right?

8 A. That's correct.

9 Q. And those invoices are addressed to whom?
10 A. Harrison Oil Company.
11 Q. And on page 75 and 77 of the fiscal record,
12 there's a bill, construction invoices?
13 A. Correct.
14 Q. And they are billed to who?
15 A. Ted Harrison.
16 Q. I guess we could go through, but at the
17 same time I think we -- it's your understanding that the
18 majority, if not all of the invoices in this request for
19 reimbursement, were directed to entities other than
20 Harrison Environmental Solutions?
21 A. That's correct.
22 Q. Now, in addition to the fact -- the
23 handling charge issue, back to this again.
24 That in addition to the fact that someone

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1 has to actually procure a subcontractor or administer a
2 subcontract, pay it, or procure material purchases for
3 the site, isn't it also true that the subject matter of
4 the contract has to be something that would be
5 appropriate to be reimbursed, for the handling charge to
6 be reimbursed?
7 A. That's correct.

8 Q. So the issue -- and, again, under old law,
9 is there something -- is there some definition that
10 applies to what is or what is not reimbursable?

11 A. The broad definition is corrective -- the
12 definition of corrective action.

13 Q. And, in fact, corrective action is defined
14 under former Section 2218 (e) (s) (c), right?

15 A. Correct.

16 Q. And, again, the Board can take
17 administrative notice of that, but that's a part of your
18 review process, correct?

19 A. Yes.

20 Q. To determine that it meets the statutory
21 criteria of being appropriate corrective action?

22 MR. HEDINGER: I'm going to object again.
23 I mean, I think this is further afield than what he was
24 doing earlier. I mean, there's nothing in this record

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1 that says these costs are denied because they're not
2 associated with corrective action.

3 HEARING OFFICER LANGHOFF: Mr. Merriman?

4 MR. MERRIMAN: Well, at this point, I'm
5 asking him specifically, because there was a discussion
6 about the scope of the accounting review, and then the

7 technical review that was requested and the reasons for
8 that.

9 And that the over-arching statutory
10 obligation is that it has to be corrective action. And
11 any charge we had listed as failure to document
12 reasonableness, and the statute as it existed at the
13 time says that we could only reimburse it if in fact
14 corrective action was reasonable and was adequately
15 documented.

16 And if they failed to document -- if the
17 reason that we deny it is that it's not reasonable,
18 because it wasn't documented to be reasonable, one of
19 the reasons that it could be not reasonable is
20 it's -- because it isn't something that is appropriate
21 reimbursement as corrective action. So I think it's all
22 part of the scope of the review.

23 HEARING OFFICER LANGHOFF: And
24 Mr. Hedinger?

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1 MR. HEDINGER: I think you're just talking
2 around a big circle.

3 He said there were separate -- I mean, the
4 statute itself said there are separate bases for
5 denial. One is reasonableness and the other is -- I

6 mean, it has to be corrective action.

7 The letter and Mr. Oakley's previous
8 testimony have only identified reasonableness. They
9 haven't identified anything to do with whether it's
10 corrective action. And to boot strap that by saying,
11 well, it's unreasonable because it's not corrective
12 action is beyond the limitation of the scope of what
13 we're doing here today.

14 HEARING OFFICER LANGHOFF: I'm going to
15 overrule your objection, Mr. Hedinger. I believe that
16 Mr. Merriman is asking Mr. Oakley the general scope of
17 his review, what his part of the LUST review does under,
18 what we'll call the old law, and I'll allow him to
19 answer the question.

20 Q. (By Mr. Merriman) Do you recall exactly
21 what that question was?

22 A. No.

23 HEARING OFFICER LANGHOFF: You'll have to
24 ask it again, Mr. Merriman.

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1 MR. MERRIMAN: I can't guarantee I'll be
2 asking the question, unless the -- could I ask that it
3 be read back?

4 HEARING OFFICER LANGHOFF: Okay.

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[Record read.]

MR. MERRIMAN: Yeah. I didn't obviously finish the question.

Q. I guess it's part of your review in determining reimbursability (phonetic) in determining whether or not the cost claimed meets the statutory definition of corrective action?

A. Yes.

Q. And sometimes that's, I take it, a technical question that is referred to the technical section?

A. That's correct.

Q. Okay. And is that one of the reasons why -- is that one of the reasons that you submit things to the technical section for the review?

A. Yes.

Q. And I think you mentioned also to determine whether the activity was part of an approved corrective action plan?

A. Correct.

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Q. And that's another one of the statutory criteria for payment, was it not?

A. Yes, that's correct.

4 Q. The final decision letter that was sent in
5 this case, I believe it's been referred to as
6 Petitioner's Exhibit 2. And it appears in a couple
7 places in the record, fiscal record, pages 33 through
8 36, for example.

9 A. Okay.

10 Q. What is the date of that letter?

11 A. January 25, 1999.

12 Q. I'm going to refer you to page one of the
13 fiscal record.

14 A. Okay.

15 Q. And previously you testified that is a
16 letter addressed to you from RAPPS Engineering and
17 Applied Science?

18 A. Correct.

19 Q. What date does that bear?

20 A. February 26, 1999.

21 Q. That postdates the January 25th decision;
22 is that right?

23 A. That's correct.

24 Q. Were you aware of the information contained

1 in that letter with respect to, for example, the lab
2 24-hour turnaround charges prior to January 25, 1999?

3 A. I don't believe so.

4 Q. To your knowledge, did the application that
5 you have before you and decided upon prior to January
6 25, 1999, contain any justification or explanation for
7 the 25-hour turnaround charge for RAPP -- or for Prairie
8 Analytical?

9 A. I do not believe so.

10 Q. Is there anything under the statute as it
11 existed at that time that obligated or required the
12 agency to notify an applicant that there were apparent
13 deficiencies and asked for further information?

14 A. Is there anything in the statute?

15 Q. That required the agency to do that.

16 A. I don't know that it was in the statute,
17 but we've done that -- yes. I believe it is. I believe
18 the statute says it has to be a complete application for
19 payment.

20 Q. The application has to be complete. But is
21 there anything if the agency determines that there is
22 something lacking in the application to justify
23 reimbursement, is there anything at that time that would
24 require the agency to contact or notify the applicant

1 and ask them to provide that additional information?

2 A. I don't know that it's in the regulations,
3 but we've traditionally done that.

4 Q. It was the agency's practice, but were you
5 obliged to do that under the statute?

6 A. I do not believe so.

7 Q. Now, the letter that was sent on -- dated
8 November 9th, which it appears beginning at page 13 of
9 the fiscal record.

10 A. 13, okay.

11 Q. Signed by you. That is -- and previously
12 you had testified about this -- requested by you, a
13 detailed discussion of all activities and duties
14 performed by Ted and Lori Harrison of Harrison's
15 Environmental Solutions during the billing period of
16 August 21, 1996 through December 3, 1996.

17 A. That is correct.

18 Q. That's correct. And that's at paragraph
19 three of that letter?

20 A. Correct.

21 Q. Why did you make that request?

22 A. Because we didn't feel we had enough
23 documentation on the original invoice. And we wanted to
24 know more detail as to what kind of activities was being

1 performed by this particular --

2 Q. The purpose for wanting additional
3 information or additional detail?

4 A. To determine if the costs were associated
5 with corrective action, as well as get more of an idea
6 of reasonableness.

7 Q. And is that an unusual thing for you to
8 make those kind of requests?

9 A. No.

10 Q. The response to that specific request,
11 appearing at pages 28 and 29 of the agency fiscal record
12 previously testified, was there any additional response
13 received by the agency regarding that request prior to
14 January 25, 1999?

15 A. Not that I'm aware of.

16 Q. The only thing that the record contains
17 that you're aware of is this written response appearing
18 at pages 28 and 29 in the record?

19 A. Correct.

20 Q. And did you review that response?

21 A. Yes, I did.

22 Q. The amount that's on page -- let me see.
23 58, yes. Referring to page 58 of the fiscal record, the
24 first item under the heading subcontractors is what?

1 A. Harrison Environmental Solutions.

2 Q. And the charge for that item?

3 A. \$80,141.50.

4 Q. That's the amount that specifically was set
5 forth in attachment A of the denial letter as not having
6 been documented to be reasonable; is that right?

7 A. That's correct.

8 Q. And does that lack of documentation of
9 reasonableness of those charges fairly reflect your
10 conclusion after having reviewed the additional
11 information submitted by the applicant that appears in
12 pages 28 and 29 of the record?

13 A. Yes, it does.

14 MR. MERRIMAN: I think that's all I have.

15 HEARING OFFICER LANGHOFF: Thank you.

16 Mr. Hedinger, I'll give you a chance to
17 question Mr. Oakley as in cross examination as a result
18 of Mr. Merriman's questions. Sort of limit it in scope,
19 theoretically.

20 FURTHER EXAMINATION

21 QUESTIONS BY MR. HEDINGER:

22 Q. Turning your attention, Mr. Oakley, to page
23 one of the fiscal record. It's that letter from RAPPS
24 Engineering that provided information.

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1 A. Okay.

2 Q. Okay? Mr. Merriman was asking you
3 questions about that. Do you recall these questions?

4 A. No.

5 Q. Do you recall him questioning you about
6 that?

7 A. Yes.

8 Q. One of the things he asked you was whether
9 you were aware of the information contained in this
10 prior to February 25, 1999. Do you recall that?

11 A. If I was aware of -- I believe he was
12 questioning me regarding the 24-hour turnaround charges;
13 is that correct?

14 Q. Right, exactly.

15 A. And was I aware of this document prior
16 to --

17 Q. The information contained in this
18 document. I don't want to re-ask Mr. Merriman's
19 question. Strike all that.

20 Just turning your attention back to this.
21 It's my recollection of your testimony when we started
22 this morning, that issues pertaining to the turnaround
23 time generally are handled by the technical review,
24 correct?

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1 A. Yes. We would ask their input on that.

2 Q. And you did not -- again, I think we just
3 discussed this earlier. But just for the record, you
4 did not look at the technical file in making your
5 reimbursement determination, correct?

6 A. That's correct.

7 Q. So the agency may have had information
8 relevant to this issue, but it wasn't in your office
9 when you were looking at this, correct?

10 A. Correct.

11 Q. You also answered some
12 questions -- turning away from this document.

13 Mr. Merriman was asking you questions
14 concerning your request for additional information. And
15 just for reference, that's page 13 of the fiscal
16 record.

17 A. Okay.

18 Q. You said that -- and this is what I've
19 written down. "We have traditionally done that,"
20 meaning you have traditionally asked for additional
21 information. Do you recall that answer to
22 Mr. Merriman's question?

23 A. Yes, yes.

24 Q. And since what time have you been -- I

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1 mean, since what year? Since the inception?

2 A. Always, yes.

3 Q. Typically, would there be one or more
4 letters go out requesting additional information?

5 A. Typically one.

6 Q. Okay. And when you say typically one, does
7 that mean it's not at all uncommon for a reimbursement
8 application to receive a request for additional
9 information?

10 A. It's not uncommon, especially in old law
11 sites, yeah.

12 Q. And for these old law sites -- let's limit
13 the question to that. Can you give me a percentage of
14 applications in which you would send a request for
15 additional information?

16 A. No, I couldn't.

17 Q. Or a range of percent? Somewhere between
18 50 and 75 percent?

19 A. I wouldn't think it would be that high,
20 but, you know, I really don't know. I'd have to have
21 the numbers.

22 Q. Okay. Mr. Merriman turned your attention
23 to invoices at pages 65 and 67 and 71 and 73 and 75 of
24 the record. Do you recall that line of questioning --

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1 A. Yes, I do.

2 Q. -- generally? And he ended that
3 questioning with just sort of a broad question of
4 whether the majority or all of the invoices were
5 directed toward an entity other than
6 environmental -- Harrison Environmental. Do you
7 remember that?

8 A. Yes, I do.

9 Q. Let me get an overview of what you had here
10 then. Is it accurate to say that this reimbursement
11 application contains a number of invoices directed to
12 either Harrison Oil Company or Ted Harrison? Or was
13 there anybody else? Or do you know?

14 A. I don't know.

15 Q. But in any event, there's a stack of
16 invoices from suppliers and subcontractors and other
17 third parties that were addressed to Harrison Oil,
18 correct?

19 A. Correct.

20 Q. And then you have what's in the record at
21 page 58, which is the Harrison's Environmental Solutions
22 list of all of these invoices that comes up with the
23 amount being sought, correct?

24 A. Correct.

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1 Q. And this list includes all of the
2 subcontractors that were involved in this portion or
3 this request for reimbursement, correct?

4 A. That's what this document says.

5 Q. And this summarizes all of those invoices
6 that were addressed to either Harrison Oil or Ted
7 Harrison or someone else, correct?

8 A. I believe so. I don't know that it's
9 any -- there's any addressed to someone else. Most of
10 them that I've looked at were either addressed to Ted
11 Harrison himself or Harrison Oil Company.

12 Q. Okay.

13 A. Just the ones I looked at.

14 Q. I understand.

15 A. Okay.

16 Q. I wasn't trying to trick you.

17 A. No.

18 Q. But as far as you know and as far as what
19 we've discussed this morning, that's what we've had in
20 front of us?

21 A. Yes.

22 Q. This bill here, page 58, it also is
23 addressed to Ted Harrison Oil Company, isn't it?

24

A. Correct.

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1 Q. From Harrison's Environmental Solutions,
2 correct?

3 A. Right.

4 Q. And Ted Harrison Oil Company is the
5 applicant here, right?

6 A. Correct.

7 Q. In fact, Ted Harrison Oil Company is the
8 entity that signed the owner certification certifying
9 that everything in this application is true and
10 accurate, correct?

11 A. I'll have to look. Can you direct me to
12 where that document is?

13 Q. I'm looking like you are.

14 A. Okay.

15 Q. How about 32. That's the taxpayer
16 certification. That's not what you're looking for, is
17 it?

18 A. No. I'm, like, looking for the
19 owner/operator certification.

20 HEARING OFFICER LANGHOFF: Mr. Merriman, do
21 you have this indexed?

22 MR. MERRIMAN: I'm sorry?

23 HEARING OFFICER LANGHOFF: Do you have this
24 indexed, the record indexed?

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1 MR. MERRIMAN: Yes, I do, but I'm not sure
2 how detailed.

3 MR. HEDINGER: Page 52.

4 THE WITNESS: That's it, yes.

5 Q. (By Mr. Hedinger) That says owner/operator
6 is Mr. Ted Harrison, right?

7 A. Correct.

8 Q. It's signed by Mr. Ted Harrison, right?

9 A. That's correct, but it's not Harrison Oil
10 Company.

11 Q. Do you have any reason -- or tell me what
12 reason you do have to dispute that the application page
13 58 is inaccurate.

14 A. Well, to begin with, the intent was never
15 to list each individual subcontractor or whoever was
16 working on this, this particular site, and add a 15
17 percent markup on each individual one. That would lead
18 me to dispute it when I would see that. I would look
19 further into it.

20 Q. But I guess my question is, what facts are
21 you aware of to question whether Harrison Environmental

22 Solutions procured, oversaw and or paid the
23 subcontractors listed on page 58?

24 A. What facts am I aware of that Harrison's

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1 Environmental Solutions, if that's the question,
2 procured, paid, etcetera?

3 Q. And oversaw the work of the subcontractors
4 listed on page 58.

5 A. I am unaware of any facts.

6 Q. Those are the statutory requirements,
7 right, that Mr. Merriman was asking you about earlier in
8 22.18 (b) (i)?

9 A. I believe so.

10 Q. I mean, among other things, that is to be a
11 reasonable profit for procurement, oversight and payment
12 of subcontractors?

13 A. Correct.

14 Q. No other entity involved in this matter,
15 aside from the Western Environmental invoices for
16 procurement we talked about earlier, are you aware of
17 any other handling charges being sought in this
18 reimbursement application?

19 A. I'm unaware of any.

20 Q. RAPPs never charged any, did they?

21 A. On this particular submittal?
22 Q. Correct.
23 A. I'm unaware. I don't believe so. I
24 believe they may have charged some previously, but I

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1 don't know that for sure either.

2 MR. HEDINGER: I'm finished.

3 HEARING OFFICER LANGHOFF: Thank you.

4 Mr. Merriman, anything further?

5 MR. MERRIMAN: Yeah, real short.

6 FURTHER EXAMINATION

7 QUESTIONS BY MR. MERRIMAN:

8 Q. So whose obligation is it to make sure that
9 the information you need to make a decision is contained
10 in the application?

11 A. It would be the owner/operator ultimately.

12 MR. MERRIMAN: I think I'm not going to ask
13 any further questions. I think it's all in the record.

14 HEARING OFFICER LANGHOFF: Thank you.

15 Thank you, Mr. Oakley. You can step down
16 and have a seat.

17 MR. HEDINGER: I will only be calling one
18 more witness, and that will be Valerie Davis. So you
19 can tell Ms. Elston that I won't need her. No, wait a

20 minute. There's a slim chance I will. But I will be
21 calling --

22 MR. MERRIMAN: We all rode here together.
23 So it's not going to make much of a difference, unless
24 she wants to walk back to the agency.

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1 MR. HEDINGER: All right.

2 HEARING OFFICER LANGHOFF: Do you wish to
3 offer Petitioner's Exhibit 1 through 8? Or do you want
4 to wait?

5 MR. HEDINGER: Well, yeah. I'll go ahead
6 and offer those.

7 HEARING OFFICER LANGHOFF: Everything is
8 part of the record, except for Exhibit 1.

9 MR. HEDINGER: Page 1 is page 58 of the
10 record, and the rest of it is as we discussed earlier.

11 HEARING OFFICER LANGHOFF: Mr. Merriman,
12 any objections to Petitioner's 1 through 8?

13 MR. MERRIMAN: No. They're all in the
14 record. Again, as indicated, the first page of Exhibit
15 1 was page 58 of the agency fiscal record, the remainder
16 pages 15 through 27 of the agency's fiscal record.

17 HEARING OFFICER LANGHOFF: Petitioner's
18 Exhibit 1 through 8 will be admitted.

19 [Whereupon Petitioner's Exhibit
20 Numbers 1 - 8 were admitted into
21 evidence.]

22 HEARING OFFICER LANGHOFF: Ready for your
23 next witness, Mr. Hedinger?

24 MR. MERRIMAN: I'd ask for a two- or

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1 three-minute recess for Mr. Oakley.

2 HEARING OFFICER LANGHOFF: Sure. We'll be
3 back in two or three minutes.

4 [Brief break.]

5 HEARING OFFICER LANGHOFF: We're back on
6 the record.

7 Mr. Hedinger, would you call your next
8 witness please.

9 MR. HEDINGER: We will call Valerie Davis.

10 HEARING OFFICER LANGHOFF: Would you swear
11 in Ms. Davis please.

12 [Witness sworn.]

13 HEARING OFFICER LANGHOFF: Thank you.

14 VALERIE DAVIS

15 of lawful age, being produced, sworn and examined on
16 the part of the Petitioner, testifies and says:

17 EXAMINATION

18 QUESTIONS BY MR. HEDINGER:

19 Q. And please state and spell your name for
20 the record.

21 A. Valerie, V-a-l-e-r-i-e; Davis, D-a-v-i-s.

22 Q. And, Ms. Davis, can you tell us where
23 you're currently employed?

24 A. The Illinois Environmental Protection

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1 Agency in the Leaking Underground Storage Tank section.

2 Q. What's the nature of your job please.

3 A. I am a project manager.

4 Q. And what do you do in that role?

5 A. We review technical plans, reports,
6 budgets, bills, various work groups, rule making, things
7 like that associated with the LUST program.

8 Q. Pretty much anything involving the LUST
9 program?

10 A. Yes.

11 Q. Okay. The notice to appear and produce
12 that you were served with today asked you to bring
13 certain documents. Did you bring anything with you?

14 A. No. I wasn't served with anything.

15 MR. HEDINGER: It was sent to Mr. Merriman,
16 but I assume that means that everything is in the

17 record?

18 MR. MERRIMAN: Everything that I'm aware of
19 is in the record. I just want to state, Stephen, that
20 I, for whatever reason, don't have a copy of that notice
21 to produce.

22 MR. HEDINGER: Oh.

23 MR. MERRIMAN: But I will -- I'm sure that
24 you served it. I just don't have a copy of it, but I

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1 just want to make sure that -- I mean, everything is in
2 the technical record, and if it's the same scope that
3 you asked --

4 MR. HEDINGER: It's exactly the same.

5 MR. MERRIMAN: Then it's all there.

6 MR. HEDINGER: Let me check if you don't
7 mind.

8 HEARING OFFICER LANGHOFF: I'm handing
9 Mr. Hedinger a copy of the hearing notice to appear and
10 produced to Ms. Valerie Davis.

11 MR. HEDINGER: Yeah, that was the same or
12 even less.

13 Q. Okay. Ms. Davis, you're
14 familiar with the matter we're here on today, correct?
15 Ted Harrison Oil Company?

16 A. Yes.

17 Q. And you understand that we're here for a
18 LUST fund reimbursement appeal?

19 A. Yes.

20 Q. And your role in this case consisted of
21 having conducted the technical review of the
22 reimbursement at issue, correct?

23 A. Right.

24 Q. Were there other requests for reimbursement

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1 submitted for this site that you've been involved with?

2 A. I may have been.

3 Q. Okay.

4 A. Since this was four years ago, I know this
5 one that I have been, because it's under appeal. The
6 other ones I have, or I may have not. I don't know.

7 Q. How is that assigned to you? How are these
8 technical reviews assigned when they come into your
9 unit?

10 A. I am the assigned project manager on the
11 technical side. So if there's some questions for
12 reimbursement, you know, that I could assist with, then
13 it comes to me.

14 Q. So you would be the one that would conduct

15 any technical review for Ted Harrison Oil at this site?

16 A. That site, yes.

17 Q. Okay. Can you tell me what is involved
18 with conducting the technical review?

19 A. Of the bills?

20 Q. Yes.

21 A. We look at the technical documentation,
22 compare that to what has been submitted with the bills
23 to make sure that the invoices and what is being
24 requested is supported technically with reports and that

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1 type of thing, that the costs are eligible, and that
2 basically that they are corrective action costs.

3 Q. Okay. And what sort of training have you
4 received to be able to do that review?

5 A. Training? Mentoring from the time that I
6 was hired at the agency, as far as the bills go. Just a
7 mentor program and kind of get experience from there.

8 Q. And who was it that conducted the
9 mentoring?

10 A. For the reimbursement?

11 Q. Yes.

12 A. Review from Kyle Rumminger (sp).

13 Q. And when you say mentoring, do I assume he

14 just basically was there to answer questions when you
15 needed -- when you had questions? Or what do you mean
16 by mentoring?

17 A. He introduced the concepts behind the
18 reimbursement review. We kind of went through things
19 together. And then as I was assigned more and more
20 projects, if I have questions, I would have went to Kyle
21 at that time, to the point that I was comfortable enough
22 not to have to go to Kyle. But, basically, that's what
23 the mentoring involved.

24 Q. Okay. Now, are there any guidance

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1 documents that you use to help you do these
2 reimbursement package technical reviews?

3 A. No.

4 Q. There's no definitional or any sort of
5 policy statements that you ever reviewed?

6 A. No policy statements. The Act and
7 regulations. Pretty much that's what leads us, yeah.

8 Q. And then what you may have discussed with
9 Mr. Rumminger or anyone else relevant to a particular
10 review? Is that accurate?

11 A. Right.

12 MR. HEDINGER: Can we hand to Ms. Davis the

13 stack of exhibits? Okay. These have previously been
14 introduced, and we've discussed these with Mr. Oakley
15 earlier.

16 Q. And I have now handed you
17 therefore what we've marked as Petitioner's Exhibits 1
18 through 8.

19 Ms. Davis, when you conduct your portion of
20 reimbursement review, do I understand that you look not
21 only at the reimbursement application, but also at the
22 technical materials that have been submitted for the
23 site?

24 A. Yes.

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1 Q. And at least the technical information
2 relevant to the charges requested in that reimbursement
3 application, correct?

4 A. Right.

5 Q. So you had before you not only the
6 reimbursement application for this site, but also what
7 we have marked here as our technical record for this
8 site, right?

9 A. Right.

10 Q. Okay. I'd like you to leaf through your
11 stack of documents. And down at the bottom right-hand

12 corner is where the exhibit number is marked. And if
13 you would please, find what's marked there as
14 Petitioner's Exhibit 6. Did you find that?

15 A. Mm-hmm, yes.

16 Q. Now, you'll see just above where it says
17 Petitioner's Exhibit 6, there's a bates stamped number
18 31. Flip back there until you come to bates stamp
19 number 37 please. It's the second to last page of that
20 document.

21 A. Okay.

22 Q. Find it? I'll ask you whether you
23 recognize that page. And, actually, is that page and
24 the page following it, 37 and 38, have you ever seen

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1 that before?

2 A. I don't believe so.

3 Q. Is that your handwriting?

4 A. No.

5 Q. When you do a technical review, do you use
6 any sort of form or listing of items that you question?

7 A. Not in any particular format, no.

8 Q. So you wouldn't use a page like this, like
9 these two pages, 37 and 38?

10 A. To answer your question; that is, I may

11 have something that needs further review? I may have
12 notes, right. And this doesn't really look like a
13 form. It looks like notes.

14 Q. So to cut right down to the bottom line,
15 this is not your work, these two pages?

16 A. These two pages, no.

17 Q. Now, in your stack of documents there, find
18 Petitioner's Exhibit Number 7. Did you find that?

19 A. Yes.

20 Q. Now, this is your work, right?

21 A. Right.

22 Q. And this is the form that at least at that
23 time you were using to communicate with the LUST fiscal
24 department concerning your technical review, correct?

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1 A. Right. It's an internal memo.

2 Q. Is there any other -- and this has two
3 pages attached to it. It's pages 39 through 41 all
4 together of the record. Are those two pages that are
5 attached your work?

6 A. No.

7 Q. Those are not yours?

8 A. No.

9 Q. Do you have any idea whose they are?

10 A. I would assume they were the accounting
11 project manager.

12 Q. Okay, all right. So as far as at least of
13 where we are right now, the first page of this document,
14 which is page 39 of the record, is that the only thing
15 that you created yourself with respect to this
16 reimbursement application review?

17 A. Yes.

18 Q. All right. I would like to turn then and
19 focus on that page 39. Turning your attention to the
20 bottom, a little more than half of the page beginning
21 with the words "cost for reimbursement preparation." Do
22 you see where I'm at?

23 A. Yeah.

24 Q. Was all of that from that point down typed

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1 in by you?

2 A. Yes. Those are my notes.

3 Q. The third item down, Harrison's
4 Environmental Solutions invoice. Do you see where I'm
5 at?

6 A. Yes.

7 Q. That states invoice for \$80,141.50 with the
8 owners of the site charging \$50 per hour. Do you see

9 where I'm reading from?

10 A. Yes.

11 Q. What prompted you to say the owners of the
12 site were charging \$50 an hour?

13 A. From what the bills said.

14 Q. It's your understanding that Harrison
15 Environmental Solutions, Inc., owned the site?

16 A. No. That was not my understanding at the
17 time. That's why I was questioning because I didn't
18 know.

19 Q. Okay.

20 A. So that's why I had numerous questions
21 about it.

22 Q. And continuing from that, it says, "For
23 then," question mark, question mark, "duties." Is that
24 questionable duties?

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1 A. Right, duties that I was not for sure what
2 those duties were.

3 Q. And then you said, "Billing owner for
4 owner's work." What does that mean?

5 A. Another question.

6 Q. But what specifically? Can you elaborate
7 on what you were questioning there?

8 A. What I was thinking at that time? That I
9 wasn't for sure exactly who was doing the work, who was
10 billing it. Was it the owner? I didn't know. It was
11 questionable.

12 Q. All right. The next item just below that
13 says 24-hour turnaround time charges?

14 A. Yes.

15 Q. This refers, doesn't it, to laboratory time
16 charges for doing a quick turnaround on lab results?

17 A. Yes.

18 Q. What's your understanding of the normal
19 turnaround time for lab results?

20 A. A couple weeks maybe, a week.

21 Q. And in this --

22 A. It depends.

23 Q. I'm sorry. Were you finished?

24 A. I guess it would depend on the lab and if

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1 it was in the same town, if they had to send it off,
2 different situation.

3 Q. What's typical then? What's a range?

4 A. I'd say a week.

5 Q. Around a week?

6 A. Yeah.

7 Q. And so here there was an extra charge for
8 doing the lab work in a quick turnaround time, correct?

9 A. Yes.

10 Q. And by turnaround time, that would mean the
11 time from which the lab receives the sample to the time
12 the lab forwards the results to whoever requested them?

13 A. Yes.

14 Q. And here apparently they wanted it in 24
15 hours. The lab charged an additional total of
16 \$2,906.25, correct?

17 A. Right.

18 Q. And it was your analysis that that charge
19 was unreasonable, right?

20 A. Right.

21 Q. Under what circumstances would a 24-hour
22 turnaround time be reasonable?

23 A. Circumstances where there is potential
24 danger, I guess, for leaving an excavation open. If you

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1 have a larger excavation, they want to take samples, get
2 the results back quick whether to continue leaving that
3 excavation open or not, whether they're going to be
4 backfilling. That's one, for instance.

5 Q. What if the costs to demobilize and

6 remobilize, in the events you had to, would exceed the
7 turnaround time on the lab? Would that make the lab
8 turnaround time cost reasonable?

9 A. Demobilize or remobilize what?

10 Q. Well, suppose the excavation is open, as
11 you were describing, and the consultant determined not
12 being certain whether they had come to the end of the
13 plume, they take some lab samples. That's basically the
14 scenario we're talking about, right? To see where they
15 have dug? To see where they have dug?

16 A. For larger excavations, yeah, they would do
17 that.

18 Q. At that point if they would have a week or
19 perhaps more of your standard turnaround time, in the
20 instance where equipment is going to be removed from the
21 site, it's typical for consultants and contractors to
22 charge for that mobilization and demobilization time,
23 correct?

24 A. Right.

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1 Q. And that's an expense to them, right?

2 A. Right.

3 Q. If it turns out that that expense for
4 demobilizing and remobilizing, if necessary, would

5 exceed the cost of the quick turnaround time, would that
6 make the quick turnaround time reasonable?

7 A. It might.

8 Q. Have you come across that kind of
9 situation?

10 A. No.

11 Q. Okay. I'd like to turn your attention to
12 what's in the record, and that's those stacks of volumes
13 there right next to you, and look for the fiscal record
14 page one. Have you ever seen that letter before?

15 A. I may have. I really don't remember.

16 Q. Well, turn to page two of that document.
17 I's on page two of the record. And the second bullet
18 point on that page says, "All Prairie Analytical
19 invoices, \$2,906.25, 24-hour turnaround charges are
20 unreasonable and not justified." Do you see that?

21 A. Yes.

22 Q. Could you read those two pages silently to
23 yourself? And just let me know when you're done looking
24 at them.

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1 HEARING OFFICER LANGHOFF: The two
2 paragraphs, Mr. Hedinger, or the two pages of the
3 letter?

4 MR. HEDINGER: I am sorry.

5 HEARING OFFICER LANGHOFF: The two

6 paragraphs?

7 MR. HEDINGER: Yes.

8 HEARING OFFICER LANGHOFF: You said pages.

9 MR. HEDINGER: I'm sorry.

10 THE WITNESS: I'm done.

11 Q. (By Mr. Hedinger) Only two paragraphs.

12 A. I thought that's what you meant.

13 Q. Okay. Would the information provided in

14 those two paragraphs have caused you to consider that

15 the \$2,906.25 was reasonable?

16 A. It may have -- for the 24-hour turnaround

17 time as far as the charges being reasonable, that -- I'm

18 not for sure. I'd have to see the invoice again, but,

19 yes.

20 Q. But that would be a justification for an

21 added cost for a 24-hour turnaround time, generally

22 speaking?

23 A. It may, yes.

24 Q. Turning your attention back once more to

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1 Petitioner's Exhibit 7, your memorandum, December 30,

2 1998.

3 Aside from this document, did you have any
4 other communication with anyone in the fiscal, in the
5 accounting unit, concerning this site prior to the final
6 decision on that reimbursement package?

7 A. Nothing written.

8 Q. Okay.

9 A. I can't say whether or not if we talked on
10 the phone or anything.

11 Q. You can't -- meaning that you don't know?
12 You can't remember?

13 A. No, I can't remember if we talked on the
14 phone about it.

15 Q. If you had, would it have -- do you recall
16 who you would have talked to?

17 A. The reviewer at the time, which was Cathy,
18 I guess.

19 Q. And you know that because she's here like
20 you are today?

21 A. Mm-hmm, yes.

22 Q. Or do you have an independent recollection
23 that she was the reviewer?

24 A. Actually, I know I do not have an

1 independent recollection that she was the reviewer.

2 Q. So you don't know whether you had any other
3 conversations with her?

4 A. Right. More than likely not, since I did
5 not have it written down.

6 Q. So from as best as you can tell, the only
7 communication you had with the accounting people was
8 this one page right here, page 39 of the record?

9 A. Yes.

10 Q. You never went out to this site, did you,
11 during the time that remediation was being conducted?

12 A. No.

13 Q. So you weren't actually physically present
14 to see any of the work done that's the subject of this
15 reimbursement request, right?

16 A. Right.

17 Q. And anything that you have said on this
18 page is in reliance upon information contained in the
19 record?

20 A. Right.

21 Q. Do you recall any conversations with anyone
22 from RAPPs or anyone else concerning this site?

23 A. At what time?

24 Q. During the --

1 A. The entirety of the remediation?

2 Q. No. Prior to the agency's final decision,
3 which was in January of '99.

4 A. Conversations concerning the bills?

5 Q. Or the work being done at the site.

6 A. Yeah, I'm sure that there have been
7 conversations with RAPPS concerning the work being done,
8 because it's not uncommon for consultants to call the
9 project managers and give us updates and things like
10 that and then follow up with, you know, written
11 documentation or something.

12 Q. I guess what I just want to nail down is in
13 providing your analysis and your review here, the
14 document of page 39, you weren't relying on any of those
15 conversations, were you? You were only relying on what
16 was in written documentation?

17 A. Written documentation, right.

18 MR. HEDINGER: Okay. No further questions.

19 HEARING OFFICER LANGHOFF: Thank you.

20 Mr. Merriman?

21 EXAMINATION

22 QUESTIONS BY MR. MERRIMAN:

23 Q. You mentioned -- and I don't want to
24 belabor this, because I think you explained it very

1 well. But you mentioned that there may be some
2 circumstances when a 24-hour turnaround charge or
3 laboratory rush charge might be justified, and you gave
4 some examples of those circumstances.

5 And then you testified, I believe, that you
6 relied in preparing this memorandum for the LUST claims
7 reviewer on your technical review, you relied solely on
8 the documentation that was presented in the application,
9 the documents that are in the record? Is that a fair
10 statement of your testimony?

11 A. Right.

12 Q. As you sit here today, is there anything
13 that you can recall in the record -- was there anything
14 that you saw in the record that provided or explained,
15 presented circumstances that would justify the doubling,
16 the lab charges for a 24-hour turnaround time?

17 A. No.

18 MR. MERRIMAN: That's all I have.

19 HEARING OFFICER LANGHOFF: Mr. Hedinger?

20 MR. HEDINGER: Nothing more.

21 HEARING OFFICER LANGHOFF: Thank you,
22 Ms. Davis.

23 MR. HEDINGER: And I think I have only one
24 more witness, and that would be Cathy Elston, and I

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1 think I'm going to be very short with her.

2 HEARING OFFICER LANGHOFF: Ann, are you
3 okay?

4 THE REPORTER: Yes.

5 HEARING OFFICER LANGHOFF: Ready for your
6 next witness then.

7 MR. HEDINGER: Do you want me to get her?

8 HEARING OFFICER LANGHOFF: Would you swear
9 in the witness.

10 [Witness sworn.]

11 CATHY ELSTON

12 of lawful age, being produced, sworn and examined on
13 the part of the Petitioner, testifies and says:

14 EXAMINATION

15 QUESTIONS BY MR. HEDINGER:

16 Q. Please state and spell your name for the
17 record.

18 A. Cathy Elston, E-l-s-t-o-n.

19 Q. And, Ms. Elston, we gave you --

20 MR. HEDINGER: And this is the same
21 question that -- Dan, does she have any other documents
22 of anything in the record?

23 MR. MERRIMAN: No.

24 Q. (By Mr. Hedinger) You brought no documents

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1 with you today?

2 A. Other than just my copy that I had, you
3 know, of what I had done, what was in the claim itself.

4 Q. What's already in the record?

5 A. Right, yes.

6 Q. Do you have any other handwritten notes of
7 your own that wouldn't be in that record?

8 A. No.

9 Q. And you understand today we're here on the
10 Ted Harrison Oil Company reimbursement appeal?

11 A. Right.

12 Q. And your role in this is that you were the
13 person assigned to review the reimbursement package
14 itself back in 1988 and 1989?

15 A. Yes, I was.

16 Q. And it's dogged you all these years, right?

17 A. Yes.

18 Q. Can you tell me briefly what your job title
19 and job description is?

20 A. I'm an Account Tech II. Currently, I
21 review the Title 16 reimbursement claims.

22 Q. Those are typically known as the new site
23 or new law sites?

24 A. Right, 732.

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1 Q. 732?

2 A. Right.

3 Q. During 1988 and 1989, what was your job
4 description at that time?

5 A. I was reviewing the old program claims at
6 that time.

7 Q. And can you tell me real briefly in your
8 own words what is entailed by conducting these reviews.

9 A. We do -- first of all, we make sure that we
10 have all the necessary agency forms, any account review
11 as far as adding and subtracting any invoices, backup of
12 any costs that are in the claim.

13 Q. And Mr. Oakley is your supervisor, correct?

14 A. Yes.

15 Q. There's a stack of documents in front of
16 you that have been marked in the bottom right-hand
17 corner. "PET" stands for Petitioner's, and then there's
18 exhibit numbers. And I'd like to turn your attention to
19 those, if you would. And, specifically, if you could
20 leaf through this pile and find Petitioner's Exhibit 6.
21 Did you find it?

22 A. Yes.

23 Q. Now, before I ask any specific questions
24 about this document, just generally, as I understood

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1 it -- and correct me if I am misstating it -- but when
2 you finished the job just previously to picking up the
3 Harrison Oil file here, you went to the list, to the
4 queue of cases? That was the next one on the list,
5 right?

6 A. Right.

7 Q. So you just pulled that file, took it back
8 to your desk and started working on it, right?

9 A. Yes.

10 Q. Can you tell me, is this the first document
11 that you generated from that file review?

12 A. Yes. We start this, and this is just to
13 use to do the review, to make sure that all the
14 information is in the same place and to help us generate
15 our letter, our final decision letter.

16 Q. And so when you get started, you pull one
17 of these out and start filling it out as a first step in
18 a file review?

19 A. Yes.

20 Q. And this is your handwriting on the
21 document, right?

22 A. Yes.

23 Q. And look it over please. Give it a good

24 scrutiny.

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1 But I mean, as you sit here today, is all
2 the information on here accurate to the best of your
3 knowledge?

4 A. To the best of my knowledge, yes.

5 Q. Mandatory document section, there's things
6 checked. Does that mean at the time you did your
7 initial review, the checked items were included?

8 A. Yes.

9 Q. So it looks like there was no proof of
10 payment of deductibility amount, and no Minority Women's
11 Business usage form?

12 A. Right.

13 Q. Were those things then later you told the
14 applicant to send in or --

15 A. At the time of these reviews, those were
16 not actually mandatory.

17 Q. Even though it says mandatory documents,
18 they weren't?

19 And I see up above that anyway, you have
20 the deductible of having been met on 10-24-94?

21 A. Right.

22 Q. You really didn't need anything for that?

23 A. It was not needed at that point in that
24 particular package.

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1 Q. Now, at the bottom portion of that
2 document, there's two lines. "The costs have been
3 deemed reasonable, based upon established standards,
4 practices and procedures with the following
5 exceptions." Do you see where I'm at there?

6 A. Yes.

7 Q. And underneath that, again, it was your
8 handwriting, accounting cuts, numbers, right?

9 A. Right.

10 Q. Now, in terms of process, is this
11 considered a preliminary document? Or is this
12 considered your last look at it before it gets -- a
13 final decision is made?

14 A. This is preliminary as far as prior to
15 sending it for a tech review. This would be my cuts
16 that I have seen in the package.

17 Q. So at this point, you've identified items
18 4, 18 and 2. And recommended deleting \$125.22,
19 \$80,856.50, \$52.34, correct?

20 A. Right.

21 Q. There's right next to that, that says, "See

22 attached." Do you know what you had attached to that
23 document?

24 A. There are a lot of things attached. And I

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1 doubt that it would, this handwritten --

2 Q. The last two pages of that exhibit?

3 A. Right.

4 Q. So that's page 37 and 38 of the record?

5 A. Yes.

6 Q. So turning then to those two pages, that's
7 your handwriting?

8 A. Yes.

9 Q. And the 80,000 figure on your sheet comes
10 from the breakdown of Ted and Lori Harrison's work,
11 correct?

12 A. Yes.

13 Q. That would be on page 38 of the record.

14 A. Yes.

15 Q. And I assume that we could figure out where
16 the 125.22 and the 52.34 on the first page of this
17 document is. Is that your expectation?

18 A. Yes.

19 Q. So at this point, does this document go to
20 Mr. Oakley? Or does the whole package go to technical

21 staff?

22 A. The entire package goes to a technical
23 review.

24 Q. Before Mr. Oakley looks at it?

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1 A. Yes.

2 Q. So at this point, you're the only one who
3 has made any kind of determination on this?

4 A. In a lot of cases, I've sat down and
5 discussed things with him. And on page -- on number 38,
6 I did discuss with him how to phrase, you know, what I
7 wanted, the detailed information.

8 Q. So the bottom of that, that's his
9 handwriting?

10 A. Yes.

11 Q. And he was just explaining to you, you
12 should request that information?

13 A. Yes.

14 Q. You had that -- you didn't -- did you do
15 anything -- well, let me stop there. Strike that, and
16 we'll move to the next document.

17 I want to ask you about, would you turn to
18 Petitioner's Exhibit Number 3. Did you find that?

19 A. Yes.

20 Q. And this is a letter requesting additional
21 information, correct?

22 A. Yes.

23 Q. And this is not an unusual letter, correct?

24 A. No.

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1 Q. Does this get generated by Mr. Oakley? Or
2 did you generate it and then give it to him for
3 signature?

4 A. I generate it.

5 Q. And the language in paragraph three of that
6 letter on the first page of it is what Mr. Oakley had
7 written?

8 A. Right.

9 Q. On your notes, right?

10 A. Yes.

11 Q. And I notice that this is dated November 9,
12 1998, right?

13 A. Yes.

14 Q. Is it typical for this kind of a letter to
15 go out prior to receiving the results of the technical
16 review?

17 A. Yes, because I could not go any farther in
18 my accounting review, because I did not have the

19 receipts. I did not have detailed information.

20 Q. Okay.

21 A. So when we send it for a tech review, it's
22 everything that we need. We do not send it until we
23 have everything that we need to do an accounting
24 review.

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1 Q. Okay. So turn your attention to
2 Petitioner's Exhibit Number 8. Did you find that?

3 A. Yes.

4 Q. This is a letter from RAPPS Engineer to
5 you, correct?

6 A. Yes.

7 Q. That provides the information or attempts
8 to provide the information you requested, right?

9 A. Yes.

10 Q. And that's dated December 16?

11 A. Yes.

12 Q. So as of that date, you had not sent this
13 to technical for review?

14 A. No.

15 Q. And when you received -- well, yeah. When
16 you received this Petitioner's Exhibit 8, it had
17 attachments attached to it, correct?

18 A. Right.
19 Q. And in fact, Petitioner's Exhibit
20 Number 4 --
21 A. Yes.
22 Q. -- that was one of the attachments, right?
23 A. Yes.
24 Q. When you got that Petitioner's Exhibit

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1 Number 4, you've seen that before, right?
2 A. Yes.
3 Q. And you've read it before?
4 A. Yes.
5 Q. Do you recall the first time you read that?
6 A. It would have been when I received the
7 letter from -- on December -- from RAPPS.
8 Q. Did you discuss it with Mr. Oakley at that
9 time?
10 A. Yes, because I still did not feel I had
11 enough information, that it did not answer what I had
12 asked for as far as details.
13 Q. And at that point, you went to Mr. Oakley
14 to see if he agreed with you?
15 A. Yes.
16 Q. It was Mr. Oakley's decision, though, as to

17 whether there was enough information; is that correct?

18 A. Well, I didn't feel that I was comfortable
19 with the information. And after consulting with
20 Mr. Oakley, I -- you know, we were in agreement that,
21 you know, there was not enough detail there.

22 Q. But if he had disagreed with you, it would
23 have been his decision, correct?

24 A. In most cases, yes.

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1 Q. Okay. Then moving to Petitioner's Number
2 7. Do you find where I'm at?

3 A. Yes.

4 Q. The top page of that is -- Ms. Davis
5 identified as her technical review. Do you recognize it
6 as being that?

7 A. Yes.

8 Q. When she -- well, first off, do you recall
9 any other communication or contact with Ms. Davis aside
10 from this document?

11 A. I don't really remember. I mean, it's been
12 four years, so.

13 Q. Okay. That's fine.

14 A. I mean --

15 Q. But as you sit here today --

16 A. No.

17 Q. -- you don't recall ever --

18 A. No.

19 Q. -- don't recall ever talking to her about

20 it?

21 A. No.

22 Q. The second and third pages of that exhibit

23 there on the record of pages 40 and 41, is that your

24 handwriting?

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1 A. Yes, it is.

2 Q. Okay. Can you tell me what these two pages

3 are?

4 A. They were my notes that I had made

5 concerning the cuts that Valerie had made, and I was

6 preparing to do the final decision letter.

7 Q. Okay. So this is basically your listing of

8 various issues that had arisen to that point?

9 A. Right.

10 Q. What would have been the date of this?

11 Approximately a little after December 30th?

12 A. Yes. I don't really know for sure exactly

13 what date I would have done that.

14 Q. Okay. Look at Petitioner's Exhibit

15 Number 5, if you would. Is that your handwriting?

16 A. Yes, it is.

17 Q. What is this for?

18 A. This is to do the payment for the fiscal
19 section, as far as what we send to them for them to do
20 the actual check.

21 Q. This tells them that you've authorized this
22 amount?

23 A. How much money we've authorized.

24 Q. And it's dated 1-6-99?

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1 A. Yes.

2 Q. Would that have been roughly the same date
3 as the documents on pages 40 and 41?

4 A. Yes. More than likely, I would have done
5 that within a day or so.

6 Q. And then finally if you look at
7 Petitioner's Exhibit Number 2, and that's the final
8 decision letter, right?

9 A. Yes.

10 Q. Did you draft this for Mr. Oakley's
11 signature?

12 A. Yes, I did.

13 Q. And I should be able to follow along the

14 attachment A to this with what's on pages 40 and 41,
15 right? It's Petitioner's Exhibit 7.

16 A. Yes.

17 Q. So the deductions listed on attachment A
18 come from your handwritten notes?

19 A. Yes.

20 Q. All right. Did you have any -- focussing
21 on this attachment A to the final decision letter. And
22 I'd like to look at paragraph three of that attachment.
23 The third item under that paragraph starts, "All Prairie
24 Analytical invoices." Do you see where I'm reading?

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1 A. Yes.

2 Q. Did that deduction come from anywhere other
3 than Valerie Davis?

4 A. That was Valerie's.

5 Q. And that was only because she said that you
6 should deduct that?

7 A. Yes, right.

8 Q. And you don't recall ever discussing that
9 with her?

10 A. No.

11 Q. And when you looked at the file, you only
12 had the specific reimbursement materials themselves?

13 You didn't have the technical file, correct?

14 A. No, no.

15 Q. The next item down, Harrison Environmental,
16 33,250. Do you see where I'm at there?

17 A. Yes.

18 Q. Is that something that came from Valerie as
19 well?

20 A. Well, we were not paying the other costs
21 based on the -- as far as the second item on that list.
22 So we would not have been paying that 33,000 also.

23 Q. So it's your understanding that the
24 15 percent markup was deleted because you deleted the

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1 reasonableness of Lori and Ted Harrison's work?

2 A. Right.

3 Q. If you would look at Petitioner's Exhibit
4 Number 7, Valerie's memorandum. The last item on that
5 page does identify the 15 percent markup as an item of
6 inquiry?

7 A. Yes.

8 Q. But I just wanted to clarify. In your mind
9 when you wrote the attachment A to the final decision
10 letter, it was not based on what Valerie said? It was
11 based on --

12 A. It was what I had also, you know, found in
13 my, you know, accounting review.

14 Q. Okay.

15 A. As far as I can remember.

16 Q. Again, Petitioner's Exhibit 7, page -- the
17 second page of that, which is your handwritten note,
18 also addresses that markup?

19 A. Yes.

20 Q. 15 percent markup can only be taken by
21 primary contractor, which was RAPPS, and that was pretty
22 much the same thing that Ms. Davis has said, right?

23 A. Right.

24 Q. I mean, I just want to make sure I

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1 understand. Is there another reason than that? Or
2 would you be saying the same thing?

3 A. More or less saying the same thing.

4 Q. Okay.

5 A. As far as I know, RAPPS had, you know,
6 submitted the claim. And so, like I said, Valerie had
7 it in her notes, and I also had it, you know, in my mind
8 evidently at the time.

9 Q. But let me go back to the question of the
10 80 -- \$88,000 deduction for the work -- I'm sorry. The

11 \$80,000 deductions for the work of Hanson
12 Environmental. Do I understand if Hanson Environmental
13 had been the primary contractor, then you would have
14 approved both the 80,000 and this 33,000?

15 A. Well, the 80 we were not approving due to
16 the fact that we did not have enough detail. So the 80
17 was not -- you know, because they were not the primary.
18 I mean, it was due to the fact that there was not enough
19 detail as far as the actual duties that took place
20 during that time.

21 Q. And so can you explain to me again what the
22 connection is between the 80,000 deductions and the
23 \$33,000 deductions? I'm not trying to confuse you.

24 A. Yeah, I know. It's like I said, four years

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1 later, trying to remember, you know, what I did at what
2 time. Like I said, I'm not really sure myself on that
3 as far as, like I said, the notes at the time and not
4 having, I mean, really reviewed this for four years. I
5 mean, four years later to remember, you know, exactly
6 what I had done.

7 Q. Okay. Well, and just so I can get some
8 closure on this, is there a connection between the
9 \$80,000 deductions and this \$33,000 in your mind?

10 A. I take it from Valerie's notes and what I
11 had, you know, that we were considering RAPPS as the
12 primary contractor. And so that the 33,000 would have
13 only been taken by the primary.

14 Q. And how does that relate to the 80,000?

15 A. I'm not really sure. Sorry.

16 Q. Okay. That's okay. And if it doesn't,
17 maybe I misunderstood your earlier testimony. That's
18 all I was trying to clarify.

19 Can you give me just a second?

20 Can you tell me why after you received the
21 technical review information from Ms. Davis why there
22 was no further letter requesting additional information?

23 A. Because in most cases, once we receive the
24 first letter, we do the final decision letter. And if

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1 there is any additional documentation that they can
2 supply to us based on the deductions we made, they
3 submit that. We did our final decision based on, you
4 know, what information we were provided with, and we go
5 from there.

6 Q. Okay.

7 A. In most cases, it's not, you know,
8 necessary to contact them several times. That's why we

9 try to make it clear the first time we send the letter
10 out exactly what we need.

11 Q. Of course, you didn't even have Ms. Davis's
12 analysis at that point, so you couldn't have told them
13 what she thought was needed, right?

14 A. No, I mean, based on what my accounting
15 review was. If Valerie had needed any additional
16 information, she would have contacted them.

17 Q. It's your understanding that that contact
18 is made directly from the technical person?

19 A. That was my understanding, correct.

20 MR. HEDINGER: Okay. No further questions.

21 HEARING OFFICER LANGHOFF: Thank you,
22 Mr. Hedinger.

23 Mr. Merriman?

24 MR. MERRIMAN: Thank you, Mr. Hearing

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1 Officer.

2 EXAMINATION

3 QUESTIONS BY MR. MERRIMAN:

4 Q. As stated in the attachment A to the
5 agency's final decision letter, the reason -- and you
6 also explained I think earlier, the reason that you cut
7 the 80,000 was because you said lack of detail; is that

8 right?

9 A. Yes.

10 Q. And the lack of detail relates to the
11 request you earlier made to the owner/operator to
12 provide detail, time and material breakdown what was
13 involved in that claim for over \$80,000; is that right?

14 A. Yes.

15 Q. And they did respond, and you looked at the
16 response and you discussed it with Mr. Oakley. And you
17 still felt that that was insufficient documentation to
18 justify reasonableness of \$80,000 reimbursement?

19 A. Yes.

20 Q. Anywhere in that detail -- or what
21 documentation you did get from them, did they discuss
22 Harrison Environmental's Solutions procuring contracts
23 for subcontractors or administering contracts for
24 subcontractors?

1 A. No.

2 Q. Was there any detail in what you did
3 receive from them that indicated anything about them
4 paying subcontractors?

5 A. No.

6 Q. Or making field purchases?

7 A. No, there wasn't.

8 Q. Is it your understanding that the
9 procurement in administration and payment of
10 subcontracts and or purchase of materials is what
11 constitutes a justification for a handling charge?

12 A. Yes.

13 MR. MERRIMAN: That's all I have.

14 HEARING OFFICER LANGHOFF: Mr. Hedinger?
15 On a limited cross examination.

16 MR. HEDINGER: Well, this was new stuff.

17 HEARING OFFICER LANGHOFF: Of anything that
18 was brought up.

19 FURTHER EXAMINATION

20 QUESTIONS BY MR. HEDINGER:

21 Q. Could you turn in the record to page 58
22 please. I'm sorry. The record is the fiscal record is
23 what I was talking about. Did you find it?

24 A. Yes.

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1 Q. Good. You've seen that page before,
2 haven't you?

3 A. Yes.

4 Q. That's a summary of all of the subcontract
5 vouchers that were included in this reimbursement

6 package, correct?

7 A. Yes.

8 Q. And it was submitted by Harrison
9 Environmental Solutions, correct?

10 A. Yes.

11 Q. And it says on that it's to be billed to
12 Ted Harrison Oil Company, Inc., right?

13 A. Yes.

14 Q. This document or this submittal was
15 accompanied by an owner certification, correct?

16 A. Yes.

17 Q. That owner certification certifies that
18 everything in the application is true and correct,
19 correct?

20 A. Yes.

21 Q. So this document you're looking at right
22 now constitutes a bill by Harrison Environmental
23 Solutions to Ted Harrison Oil Company to pay all of the
24 subcontracts, correct?

1 A. That's what it looks like.

2 Q. And the owner has told you in that
3 certification that that is an accurate document,
4 correct?

5 A. Yes.

6 Q. And this page, by the way, that was
7 submitted with the original application submittal,
8 right?

9 A. As far as I know, yes.

10 Q. And to the best of your recollection, this
11 wasn't part of the additional information that was sent
12 to you, correct?

13 A. As far as I can remember, no.

14 MR. HEDINGER: Okay. No further questions.

15 HEARING OFFICER LANGHOFF: Thank you.

16 Mr. Merriman, anything further?

17 MR. MERRIMAN: No, nothing further.

18 HEARING OFFICER LANGHOFF: Thank you,

19 Ms. Elston.

20 MR. HEDINGER: At this point then, the
21 Petitioner will rest.

22 HEARING OFFICER LANGHOFF: Thank you.

23 Mr. Merriman?

24 MR. MERRIMAN: Well, I believe I would call

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1 Mr. Harrison now.

2 HEARING OFFICER LANGHOFF: Okay.

3 Mr. Harrison, could you come up please?

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[Witness sworn.]

HEARING OFFICER LANGHOFF: Thank you.

TED HARRISON

of lawful age, being produced, sworn and examined on
the part of the Respondent, testifies and says:

EXAMINATION

QUESTIONS BY MR. MERRIMAN:

Q. Good afternoon, Mr. Harrison. We'll try to
make this as brief as I can.

Would you please for the record tell us how
you first learned or when you first learned about the
release at the Virginia site.

A. How I learned about it?

Q. Yes.

A. Well, first I contacted Haner (sp)
Equipment, and they contacted someone to make the tests
on it.

Q. Who was that, that was contacted to make
the tests?

A. Haner Equipment contacted -- I don't
remember who the firm was that done the work for them.

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It's been 10 years ago nearly. I could look it up,
though.

3 Q. When those tests were conducted, what
4 happened? What was the bill?
5 A. They said they were fine.
6 Q. And then what?
7 A. We kept losing product.
8 Q. What did you do next with respect to that?
9 A. Well, I reported that we had a leak.
10 Q. And then what did you do?
11 A. Well, then we had to make application to
12 remove the tanks.
13 Q. And --
14 MR. HEDINGER: I'm going to object. You
15 know, we're kind of starting at the beginning of time
16 here, and I don't see really what --
17 MR. MERRIMAN: I'll try to bring it forward
18 rather quickly.
19 THE WITNESS: We got paid for that, by the
20 way.
21 HEARING OFFICER LANGHOFF: Objection
22 overruled.
23 Q. (By Mr. Merriman) Who made the application
24 for the tank removal?

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1 A. I did.

2 Q. Personally?

3 A. I believe so.

4 Q. Are you employed?

5 A. Pardon?

6 Q. Are you employed?

7 A. I'm unemployed now.

8 Q. Were you employed at that time?

9 A. I don't believe so. '92 was the last --

10 Q. I'm sorry?

11 A. I worked for the oil company until '92.

12 Q. And what oil company would that be?

13 A. Ted Harrison Oil, Inc.

14 Q. And that's an Illinois corporation? That

15 was an Illinois corporation?

16 A. Yes.

17 Q. And sometimes referred to as Ted Harrison

18 Illinois Company, Inc., and sometimes referred to as Ted

19 Harrison Illinois Company?

20 A. I refer to it as Ted Harrison Oil Company

21 comma, Inc. comma -- or Inc. period.

22 Q. All right.

23 A. Somebody along the way chose to refer to it

24 as Ted Harrison and others, different ones.

1 Q. The tanks were removed from the site. Do
2 you recall when approximately, what year?

3 A. Oh, boy.

4 Q. Might that have been 1992?

5 A. I believe so probably. Maybe sooner.

6 Q. And then you hired RAPPS engineering to do
7 a site investigation?

8 A. I did.

9 Q. And they did that and submitted the results
10 to Illinois EPA, and that's what started the
11 remediation?

12 A. Yes.

13 Q. What type of remediation occurred after the
14 tanks were removed? What essentially was done, just if
15 you could briefly tell us?

16 A. Well, we built the treatment cell and
17 hauled the dirt to the treatment cell.

18 Q. Where was that?

19 A. That was on the property that I owned.

20 Q. And where was that in connection with the
21 gas station?

22 A. About one mile northeast.

23 Q. Was the gas station in Virginia?

24 A. Yes. It was at the intersection of 78 and

1 125.

2 Q. So it's a relatively active, for Virginia,
3 active intersection?

4 A. The best location in town, very active.

5 Q. What did you do with the -- at the
6 treatment cell, what was the treatment cell?

7 A. Well, we hauled the dirt to the treatment
8 cell first. And then we had the tiller on a Bobcat that
9 we tilled all the soil many times, and we also disked it
10 with a tractor and a disk.

11 MR. HEDINGER: I'm going to object to this
12 whole questioning. In fact, I'm going to object to
13 having called Mr. Harrison, because it just occurred to
14 me Mr. Harrison isn't on Mr. Merriman's witness list.

15 HEARING OFFICER LANGHOFF: Okay. I'm going
16 to overrule your objection with regard to having him
17 calling Mr. Harrison, since Mr. Harrison was here as a
18 party, and he's already been called on the stand.

19 MR. HEDINGER: I mean, just to clarify,
20 though. I mean, I didn't have any chance to prepare
21 Mr. Harrison. I had no advanced warning that
22 Mr. Merriman was going to call him.

23 HEARING OFFICER LANGHOFF: And I've already
24 made my ruling with regard to that. And I'll wait for

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1 Mr. Merriman to ask a question, and then you can
2 object.

3 MR. HEDINGER: All right.

4 HEARING OFFICER LANGHOFF: But right now, I
5 don't have a question.

6 MR. HEDINGER: I understand.

7 MR. MERRIMAN: And I better make it good.

8 Q. Mr. Harrison, was all the
9 soil that was excavated from the site taken to the
10 treatment cell?

11 A. Yes.

12 MR. HEDINGER: Can I object also to the
13 relevance of this?

14 HEARING OFFICER LANGHOFF: Well, I was
15 waiting for your objection --

16 THE WITNESS: Before.

17 HEARING OFFICER LANGHOFF: -- Mr. Hedinger,
18 to --

19 MR. HEDINGER: To the question at all?

20 HEARING OFFICER LANGHOFF: To the
21 question. I assume that you want to object on the same
22 grounds that you objected to before?

23 MR. HEDINGER: Exactly.

24 HEARING OFFICER LANGHOFF: But I'm waiting

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1 to hear your objection.

2 MR. HEDINGER: Yes, yes. That's a
3 continuing objection. This witness shouldn't be on the
4 stand at all.

5 HEARING OFFICER LANGHOFF: Well, what's a
6 continuing objection? The fact that Mr. Harrison
7 wasn't -- or Mr. Merriman didn't put Mr. Harrison on the
8 witness list?

9 MR. HEDINGER: That is one. And at this
10 point, I thought we would be getting into more
11 relevance, and we haven't. And so, yes, I would raise
12 relevance as an objection as well.

13 HEARING OFFICER LANGHOFF: And then I will
14 consider that a running objection as to the line of
15 questions, but I did not consider that a running
16 objection before. So we're back to basically square
17 one, and where it's Mr. Merriman's question, and I'll
18 listen to it.

19 MR. MERRIMAN: Thank you. I think I asked
20 if all the soil that was excavated from the LUST site
21 was taken to the treatment --

22 HEARING OFFICER LANGHOFF: Thank you. And
23 at this time, I'll go ahead and ask for your response,
24 Mr. Merriman, to his, Mr. Hedinger's running objection

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1 to the relevance of this line of questioning.

2 MR. MERRIMAN: Well, Mr. Hedinger mentioned
3 earlier when Mr. Oakley was on the stand that these
4 bills included -- or the statement included matters at
5 two sites. I want to clarify what two sites we're
6 referring to, or if there's another, I guess, gas
7 station or something that was included in that.

8 HEARING OFFICER LANGHOFF: Is that part of
9 the record that the agency relied on when making its
10 decision in this case?

11 MR. MERRIMAN: Well, the agency relied on
12 the documentation it was provided. And, no, the agency
13 didn't rely on Mr. Hedinger's representation.

14 HEARING OFFICER LANGHOFF: And was there
15 anyone on the witness stand that testified that it had
16 occurred at two sites?

17 MR. HEDINGER: Mr. Oakley didn't know.

18 MR. MERRIMAN: The question was, was
19 Mr. Oakley aware of that, and might that have made a
20 difference, I think. And I don't recall his answer, but
21 I think he said he wasn't -- he had a question about it
22 being at two sites. I just wanted to clarify that
23 two-site issue.

24 HEARING OFFICER LANGHOFF: That wasn't the

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1 question that you asked, though.

2 MR. MERRIMAN: Okay. Well, I know. I'm
3 trying to get at it in a somewhat roundabout way.

4 HEARING OFFICER LANGHOFF: I'm going to
5 sustain the objection.

6 MR. MERRIMAN: All right. I'll try to
7 address my question in a more direct manner then.

8 HEARING OFFICER LANGHOFF: Okay.

9 Q. (By Mr. Merriman) Mr. Harrison, shifting
10 gears here a little bit. Tell me about Harrison's
11 Environmental Solutions.

12 A. That was my daughter and I. And she and I
13 went to school to learn how to do this. And we had the
14 license through the fire marshal to do it. And we also
15 had OSHA's test to proceed with the work. And since we
16 were going to have two sites, we needed two people,
17 because you're required to have a person with those
18 qualifications on each site all day.

19 Q. Was Harrison Environmental Solutions
20 incorporated?

21 A. No.

22 HEARING OFFICER LANGHOFF: Just a second,
23 Mr. Harrison.

24 Again, Mr. Merriman, I don't see -- this

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1 isn't along the same lines of relevancy that you
2 discussed, wondering whether the remediation took place
3 at -- or was taken at two sites, however you want to put
4 it. Now you're getting into the incorporation of the
5 business of the environmental firm.

6 MR. MERRIMAN: Well, I think he answered
7 the question about the two sites.

8 HEARING OFFICER LANGHOFF: I didn't hear an
9 answer.

10 MR. MERRIMAN: In his response.

11 HEARING OFFICER LANGHOFF: I didn't hear
12 you ask the question.

13 MR. MERRIMAN: Well, I didn't. I didn't.
14 I'm sorry. But he, in his answer, he referenced the
15 fact that there were two sites, and I think a follow-up
16 question about the two sites just to clarify that the
17 land treatment cell and the station --

18 HEARING OFFICER LANGHOFF: I haven't heard
19 any of those questions, Mr. Merriman. You can ask them
20 now.

21 Mr. Harrison, before you answer, let me
22 have a chance to discuss the objection, because they are
23 running objections.

24

Q. (By Mr. Merriman) Okay. The land -- you

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1 mentioned two sites, that you and your daughter were
2 involved with two sites. The two sites that you're
3 referring to, the gas station in Virginia and then the
4 property approximately a mile away where the land
5 treatment cell occurred, are those the two sites?

6 HEARING OFFICER LANGHOFF: Mr. Hedinger, do
7 you have an objection?

8 MR. HEDINGER: To the extent that we are
9 into basically summarizing background information, which
10 should be in the record, I don't object. I think much
11 more specificity on this issue, and we're getting into
12 questions --

13 HEARING OFFICER LANGHOFF: Do you have any
14 objection to his question as he just asked it?

15 MR. HEDINGER: No, I don't.

16 HEARING OFFICER LANGHOFF: You can answer
17 that question.

18 THE WITNESS: Yes, there are two sites.
19 One is owned by Ted Harrison Oil, Inc., or was, and the
20 other one was owned by myself and my wife, and it was on
21 the farm. It was a mile away.

22 Q. (By Mr. Merriman) Okay, thank you.

22 made their decision, did they?

23 MR. MERRIMAN: No, we did not.

24 HEARING OFFICER LANGHOFF: Okay. Then I'm

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1 going to sustain the objection on the grounds of
2 relevancy, or lack of.

3 Q. (By Mr. Merriman) You have had an
4 opportunity to listen to the testimony that was
5 presented today and the reference to a letter that was
6 made in response to -- or a response that was made to a
7 letter from the agency asking for additional
8 information. Do you recall that?

9 A. Yes.

10 Q. And referring to the two-page document that
11 has been referenced. It appears that pages 28 and 29 of
12 the fiscal record was titled Lori and Ted Harrison's
13 duties. Do you recall that?

14 A. Yes.

15 Q. Is that the only document or only response
16 that you made to the agency in response to that November
17 letter asking for detail?

18 MR. HEDINGER: I'm going to object that the
19 agency people have said they got nothing more. So even
20 if Mr. Harrison said, no, this isn't the only thing --

21 MR. MERRIMAN: Okay. Well --

22 MR. HEDINGER: -- it wouldn't be relevant,
23 because they didn't get it.

24 HEARING OFFICER LANGHOFF: Okay.

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1 Mr. Merriman?

2 MR. MERRIMAN: That's right. I'll withdraw
3 that question. In fact, I have no other questions.

4 HEARING OFFICER LANGHOFF: Thank you.

5 MR. HEDINGER: Nothing.

6 HEARING OFFICER LANGHOFF: Thank you,
7 Mr. Harrison. You may step down.

8 MR. HEDINGER: Leave that up there.

9 THE WITNESS: Oh, yeah.

10 HEARING OFFICER LANGHOFF: Thank you.

11 MR. MERRIMAN: I think with the testimony
12 that was provided by Valerie Davis, Mr. Oakley and Cathy
13 Elston and the items that are in the record as well as
14 Petitioner's exhibits, at this point, I think there's
15 nothing further we need to do.

16 HEARING OFFICER LANGHOFF: Thank you.

17 Do you have any kind of rebuttal?

18 MR. HEDINGER: No.

19 HEARING OFFICER LANGHOFF: Thank you.

19 filed in accordance with Section 101.628 of the Board's
20 procedural rules. Public comments must be filed by
21 November 20, 2002. The mailbox rule set forth at
22 35 Illinois Admin. Code 101.102 D and 101.44 C will
23 apply to any post-hearing public comments.

24 Is there anything further for me from the

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1 parties before we conclude?

2 MR. HEDINGER: Nothing for me.

3 HEARING OFFICER LANGHOFF: Okay. Thank
4 you.

5 At this time, again, I'd like to ask are
6 there any members of the public present that want to
7 make statements on the record?

8 Seeing none, I'm required to make the
9 statement as to the credibility of witnesses testifying
10 during the hearing. This statement is to be based upon
11 my legal judgment and experience. And, accordingly, I
12 so state that I found all the witnesses testifying to be
13 credible. Credibility should not be an issue for the
14 Board to consider in rendering its decision in this
15 case.

16 At this time, I'll go ahead and conclude
17 the proceedings. It is Wednesday, October -- excuse

18 me. I wish it was.

19 THE HEDINGER: The 6th.

20 HEARING OFFICER LANGHOFF: It is Wednesday,
21 November 6, 2002, at approximately 12:50 in the
22 afternoon, and we stand adjourned.

23 I thank everyone for their participation
24 and wish everyone a safe drive. Thank you.
[End of proceeding.]

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COURT REPORTER'S CERTIFICATION

2

3 I, Ann Marie Hollo, Certified Shorthand
4 Reporter, Registered Professional Reporter, Registered
5 Merit Reporter of the State of Illinois and Notary
6 Public, do hereby certify that said hearing before the
7 Illinois Pollution Control Board and Illinois Pollution
8 Control Board Hearing Officer Steven C. Langhoff, took
9 place on the 6th day of November, A.D., 2002, and held
10 at the Illinois Pollution Control Board Room, 600 South
11 Second Street, Springfield, Illinois.

7

8 I do hereby certify that I did take
9 stenographic notes of the proceedings and that said
10 notes were reduced to typewritten form under my
11 direction and supervision.

10 I do further certify that the attached and
11 foregoing is a true, correct and complete copy of my
12 notes and that said testimony is now herewith returned.

12 I do further certify that I am not related
13 in any way to any of the parties involved in this action
14 and have no interest in the outcome thereof.

14 Dated at Litchfield, Illinois, this 11th
15 day of November, A.D. 2002 and given under my hand and
16 seal. My commission expires April 5, 2006.

16

Ann Marie Hollo, CSR, RPR, RMR

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